No. 2617

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN THREE VOLUMES.)

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

VOLUME I.
(Pages 1 to 288, Inclusive.)

Upon Writ of Error to the Supreme Court of the Territory of Hawaii.

Filed

AUG 12 1915

F. D. Monckton,

Clerk

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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United States Circuit Court of Appeals for the Ninth Circuit.

INTER-ISLAND STEAM NAVIGATION CO., LTD., an Hawaiian Corporation,

Defendant, Plaintiff in Error,

vs.

GEORGE E. WARD,

Plaintiff, Defendant in Error.

Notice of Filing of Transcript of Record on Writ of Error and Designation of Parts of Record to be Printed.

To George E. Ward and Messrs. E. A. Douthitt and John T. De Bolt, Attorneys for Said George E. Ward:

Please take notice that the transcript of the record in the above-entitled cause was transmitted to the Clerk of said Court for filing, on June 17th, 1915.

You are further notified that the Plaintiff in Error considers all of the record necessary for the consideration of its assignments of error with the exception of the following, which Plaintiff in Error does not consider necessary to be printed in said record and desires to have omitted from said record as printed:

1. Omit pages 1 to 4, inclusive: Petition for Writ of Error to the Circuit Court of the First Judicial Circuit of the Territory of Hawaii;
2. Omit pages 5 to 19, inclusive: Assignments of Error;
3. Omit page 20: Notice of Issuance of Writ of Error;

4. Omit page 21: Summons and Return of Service;,
5. Omit pages 22 to 25, inclusive: Bond on Writ of Error;
6. Omit pages 26 to 28, inclusive: Writ of Error;
7. Omit page 39: Plaintiff's Demand for Trial by Jury;
8. Omit page 290: Testimony of Malcolm Macintyre;
9. Omit pages 240–250, inclusive: Testimony of Dr. James A. Morgan;
10. Omit pages 295–351, inclusive: Testimony of Dr. George F. Straub;
11. Omit pages 565–618, inclusive: Testimony of Dr. Clifford B. Wood;
12. Omit pages 618–651, inclusive: Testimony of Dr. James Robert Judd;
13. Omit pages 678–682, inclusive: Testimony of Dr. George H. Stover;
14. Omit pages 761–762, inclusive: Testimony of M. M. Graham;
15. Omit page 830: Appearance of J. T. DeBolt, as Attorney for George E. Ward;
16. Omit all original exhibits sent up to Circuit Court of Appeals, said exhibits being:
    (a) Plaintiff's Exhibit "A," being model of coal conveyor;
    (b) Defendant's Exhibit 1, being blue-print of conveyor;
    (c) Defendant's Exhibit 5, being a pulley worn by cable;

(d) Defendant's Exhibit 7, being a dolly worn by cable. Said exhibits are designated out of the printed record for the reason that in accordance with Rule 14, Subdivision 4, of the Circuit Court of Appeals said exhibits are not required to be printed.

17. Omit all endorsements on the various pleadings except the word "filed" and the date of filing.

Dated, Honolulu, June 19, 1915.

L. J. WARREN,
E. W. SUTTON,
Attorneys for Plaintiff in Error.

I hereby certify that a duplicate of the above Notice and Designation was served upon J. T. De-Bolt, Esquire, one of the Attorneys for George E. Ward, the Defendant in Error, on June 19th, 1915.

Dated, Honolulu, June 19th, 1915.

E. W. SUTTON,
Of Counsel for Plaintiff in Error.

Receipt of a copy of the within Notice and Designation is hereby admitted this 19th day of June, 1915.

JOHN T. DE BOLT,
Of Counsel for Defendant in Error.

[Endorsed]: No. 2617. United States Circuit Court of Appeals for the 9th Circuit. Inter-Island Steam Navigation Co., Ltd., an Hawaiian Corporation, Defendant, Plaintiff in Error, vs. George E. Ward, Plaintiff-Defendant in Error. Notice of Filing Transcript of Record on Writ of Error and

Designation of Parts of Record to be Printed. Filed Jul. 2, 1915. F. D. Monckton, Clerk.

In the Supreme Court of the Territory of Hawaii.
October, 1914, Term.

GEORGE E. WARD,
Plaintiff and Defendant in Error,
vs.
INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Hawaiian Corporation,
Defendant and Plaintiff in Error.

Appearance and Answer to Writ of Error, etc.

Now comes George E. Ward, the plaintiff and defendant in error herein, by Messrs. Douthitt & Coke, his attorneys, and hereby appears in the above-entitled court, pursuant to the writ of error heretofore issued herein, and for answer to said petition for a writ of error, assignments of error, and writ of error, says: That there is not any error in the record and proceedings aforesaid, nor in the rendition of judgment by the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, nor in the verdict of the jury in said cause, nor in any other matter, proceeding, or ruling herein.

WHEREFORE, he prays that the said Judgment

may be affirmed and that his costs may be adjudged to him.

GEORGE E. WARD,
Plaintiff and Defendant in Error,
By (Signed) DOUTHITT & COKE,
His Attorneys.

Dated; Honolulu, December 21, 1914. [29*]

Due service of within appearance and Answer to Writ of Error, etc., and receipt of copy thereof admitted this 21st day of December, 1914.

SMITH, WARREN, HEMENWAY & SUTTON,
E. W. S.
Attorneys for Defendant and Plaintiff in Error.

[30]

Filed December 21, 1914, at 3:55 P. M.

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

(Stamps $2.00.)

GEORGE E. WARD,
Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,
Defendant.

*Page-number appearing at foot of page of Original Transcript of Record.

Complaint.

DAMAGES.

To the Honorable, the Presiding Judge of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii:

Now comes the above-named plaintiff, George E. Ward, and complaining of the above-named defendant, Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, and for cause of action alleges, avers and shows as follows:—

First. That plaintiff is a citizen of the United States, a resident and citizen of the Territory of Hawaii, and is now forty years of age. That at the time of the accident and injuries hereinafter complained of and for a long time prior thereto, he followed the vocation of MACHINIST AND ENGINEER, and as such machinist and engineer aforesaid earned as wages the sum of Six ($6.00) Dollars per day, and overtime, or an average of about One Hundred and Fifty ($150.00) Dollars per month. Plaintiff avers in this behalf that he knows no other business or vocation except that of machinist and engineer aforesaid, and was and is dependent solely and exclusively on his earnings and wages as such for his support. Plaintiff **[31]** further avers that prior to the accident and injuries hereinafter complained of, he was a strong, robust and healthy man in the full use and enjoyment of his limbs.

Second. That at all the times herein mentioned the above-named defendant was and still is a cor-

poration organized and existing under and by virtue of the laws of the Territory of Hawaii, and transacts business and has its principal office in Honolulu, City and County of Honolulu, Territory of Hawaii.

Third. That on the 8th day of July, A. D. 1912, at Honolulu, aforesaid, and for a long time prior thereto, the said defendant, as a part of its said business, maintained, carried on, conducted, operated, and ran a certain cable railway or coal-conveyor, for the purpose of conveying, carrying and transporting coal on cars for such purpose provided by said defendant, from the place where such cars were loaded to the point and place where such coal was by said defendant required to be dumped and unloaded. That said cars so loaded with coal aforesaid were, by said defendant run and operated on steel rails upon a circular track, and were drawn and propelled along and over the same by means of a steel cable to which said cars were attached. That said steel cable was held in position on the curves of said track by certain pulleys or rollers around which the said cable was passed and drawn. That said railway and its cable and appliances were, on the date of the accident and injuries hereinafter complained of, built on a wooden superstructure elevated above the ground at a height of between twenty and thirty feet, and was on said date under the exclusive management and control [32] of said defendant.

Fourth. That on said 8th day of July, A. D. 1912, and for some time prior thereto,

plaintiff herein was employed by said defendant as foreman the ~~general~~ ~~superintendent~~* of said coal-conveyor.

Fifth. That the said steel cable so used and operated by said defendant as aforesaid, was on said date, and for a long time prior thereto had been in a dangerous, unsafe and worn-out condition, and unfit for the use and purpose required of it. That by reason of its unsafe, dangerous and worn-out condition, the said steel cable had, on said 8th day of July, A. D. 1912, and prior thereto, a tendency to slip and become detached from the said pulleys holding the same in position, all of which was then and there well known to said defendant and its agents. That by reason of said unsafe, dangerous and worn-out condition of said cable, and by reason of the negligence and carelessness of the said defendant, its agents, servants and employees in allowing and permitting the same to remain, continue and be in use and operation, the said cable on said 8th day of July, A. D. 1912, became detached and slipped from the pulleys holding the same in position. That while plaintiff herein was endeavoring and attempting to restore said cable to its proper position around the said pulleys, and without any fault or negligence on his part, the said cable notwithstanding the efforts of plaintiff herein, together with the other employees, to keep and maintain the same in position, suddenly, and with great force and violence, flew

[*Amended by order of Court May 5/13.—(S.) Job Batchelor, Clerk.]

and become entirely detached from the said pulleys and struck plaintiff herein upon his body and hurled and precipitated him with great [33] force and violence to the ground below.

Sixth. Plaintiff further alleges that said defendant, although well knowing the tendency of said cable to slip and become detached from said pulleys by reason and on account of its dangerous, unfit and worn-out condition, and in disregard of the lives, limbs and safety of those employed about and near said cable, carelessly, negligently and knowingly failed and neglected to provide a suitable or any platform or guard-rail around said tracks so that reasonable protection might be afforded those obliged to work around and near said cable in the event of said cable slipping from said pulleys or rollers.

Seventh. Plaintiff further alleges that by reason of the unsafe, unfit, dangerous and worn-out condition of said cable, so supplied and furnished by said defendant as aforesaid, and by reason of the negligence and carelessness of said defendant in failing to provide a suitable or any platform or guard-rail as hereinabove alleged he suffered and still suffers the injuries hereinafter set forth.

Eighth. That as a result of the negligence and carelessness of the said defendant, its agents, servants and employees, as hereinabove alleged and set forth, plaintiff herein suffered a fracture at the base of his skull, a concussion of the right kidney, a fracture of the pelvis, a concussion of the brain, and distortion of the spine, and was greatly bruised,

wounded and contused. That by reason of said injuries he was confined in the hospital for over two months. Plaintiff further avers in this behalf that by reason of the injuries sustained by him as aforesaid he was and still is greatly shaken up, disturbed [34] and disordered in his nervous system, and as a result of said injuries he has been, and still is, greatly sick, sore, lame, disabled and crippled; and has suffered and still suffers great agony and pain. That ever since said injuries he has been and still is obliged to receive medical assistance, care and attention.

Ninth. That by reason of the injuries so sustained by him as aforesaid, plaintiff is now and will be prevented from carrying on his usual vocation of machinist and engineer, for the reason that he is now and will be permanently crippled and injured.

Tenth. That by reason of the matters and things hereinabove alleged, and by reason of the negligence and carelessness of said defendant, its agents, servants and employees, as hereinabove alleged, plaintiff has suffered damages herein in the sum of FIFTY THOUSAND DOLLARS ($50,000.00).

WHEREFORE, PLAINTIFF PRAYS: (a) That process may issue herein citing said defendant to appear and answer this complaint as by law provided; (b) That he may have judgment against said defendant for the sum of FIFTY THOUSAND DOLLARS ($50,000.00) as and for damages sustained by him by and through the negligence of said defendant as aforesaid; together with costs of court.

Dated at Honolulu, City and County of Honolulu,

Territory of Hawaii, this 10th day of March, A. D. 1913.

(Signed) GEORGE E. WARD,
Plaintiff.

(Signed) DOUTHITT & COKE,
Attorneys for Plaintiff. **[35]**

City and County of Honolulu,
Territory of Hawaii,—ss.

George E. Ward, being first duly sworn, deposes and says: That he is the plaintiff named and designated in the foregoing complaint; that he has read the same, knows the contents thereof, and the same is true of his own knowledge.

(Signed) GEORGE E. WARD.

Subscribed and sworn to before me this 10th day of March, A. D. 1913.

[Notarial Seal] (Signed) P. SILVA,
Notary Public, First Judicial Circuit, Territory of Hawaii.

Filed Mar. 10, 1913, at 1:10 o'clock P. M. **[36]**

In the Circuit Court of the First Circuit, Territory of Hawaii.

A. D. 1913, Term.

(Stamp $2.00).

GEORGE E. WARD,
Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, An Hawaiian Corporation,
Defendant.

Term Summons.

The Territory of Hawaii:

To the High Sheriff of the Territory of Hawaii, or his Deputy; the Sheriff of the City and County of Honolulu, or his Deputy:

You are commanded to summon Inter-Island Steam Navigation Company, Limited, defendant, in case it shall file written answer within twenty days after service hereof to be and appear before the said Circuit Court at the term thereof pending immediately after the expiration of twenty days after service hereof; provided, however, if no term be pending at such time, then to be and appear before the said Circuit Court at the next succeeding term thereof, to wit, the A. D. 1914, Term thereof, to be holden at Honolulu, City and County of Honolulu, on Monday, the 12 day of January next, at 10 o'clock A. M., to show cause why the claim of George E. Ward, plaintiff, should not be awarded to him pursuant to the tenor of his annexed Complaint.

And have you then there this Writ with full return of your proceedings thereon.

WITNESS the Honorable Presiding Judge of the Circuit Court of the First Circuit at Honolulu aforesaid, this 10th day of March, A. D. 1913.

[Seal] (S) J. A. DOMINIS,
Clerk.

Served the within Summons as follows: On Inter-Island Steam Navigation Co., Ltd., through James A. Kennedy, its President, on —— at Honolulu this

12th day of March, 1913, by delivering to him a certified copy hereof and of the complaint hereto annexed and at the same time showing him the original.

_____.

Dated March 12th, 1913.

(S) JOE S. NOBRIGA,
Police Officer.

L. No. 7721. Reg. 4 pg. 187. Circuit Court First Circuit. George E. Ward, Plaintiff, vs. Inter-Island Steam Navigation Company, Limited, An Hawaiian Corporation, Defendant. Term Summons. Issued at 1:10 o'clock P. M., March 10th, 1913. (S) J. A. Dominis, Clerk. Returned at 3:40 o'clock P. M., Mar. 12th, 1913. (S) J. A. Dominis, Clerk.

Motion for nonsuit granted June 26, 1913. (S) C. A. K. Hopkins, Clerk. Honolulu Police Dept. Received Mar. 10, 1913, at 1:40 o'clock P. M. (S) J. K. Kanepuu, Clerk. **[37]**

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

GEORGE E. WARD,
Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,
Defendant.

Answer.

DAMAGES.

Now comes the defendant in the above-entitled cause, by its attorneys, Holmes, Stanley & Olsen and Smith, Warren and Hemenway, and for answer to the complaint filed herein, says that it denies each and every allegation in said complaint contained.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
By HOLMES, STANLEY & OLSON,
(I. M. S.)
And SMITH, WARREN & HEMENWAY,
Its Attorneys.

Filed Mar. 31, 1913, at 2:15 o'clock P. M. [38]

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

GEORGE E. WARD,
Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,
Defendant.

Motion to Amend [Complaint].

To the Honorable H. E. COOPER, First Judge of the Above-entitled Court:

Now comes the above-named plaintiff, by Messrs. Douthitt & Coke, his attorneys, and hereby moves to amend his complaint at the bar of this Court by

striking out the words "general superintendent" set forth and contained in the third line of the fourth paragraph of said complaint, on page three thereof, and inserting in lieu thereof the word "foreman."

This motion is made upon the ground that the said words "general superintendent" as set forth above were written in said complaint by mistake in that plaintiff herein was not employed by said defendant in the capacity as a "general superintendent" but as a "foreman," and is based upon all of the papers, pleadings and files herein, and upon this motion. [40]

Dated at Honolulu, City and County of Honolulu, Territory of Hawaii, this 1st day of May, A. D. 1913.

GEORGE E. WARD,
Plaintiff.

By (Signed) DOUTHITT & COKE,
His Attorneys.

Notice [on Motion to Amend Complaint.]

To the Above-named Defendant, and to Messrs. Holmes, Stanley & Olson and Messrs. Smith, Warren & Hemenway, Its Attorneys.

You and each of you will please take notice that the foregoing motion to amend will be presented to Hon. H. E. Cooper, First Judge of the above-entitled court on Monday, the 5th day of May, A. D. 1913, at the hour of 9:30 o'clock A. M., on said day, or as soon thereafter as counsel can be heard, at the court-

room of said judge in the Judiciary Building in Honolulu aforesaid.

Yours etc.,

DOUTHITT & COKE,

Attys. for Plaintiff.

Service and receipt of copy of above motion and notice this 1st day of May, A. D. 1913, admitted.

(S) HOLMES, STANLEY & OLSON,

(S) SMITH, WARREN, HEMENWAY & SUTTON,

Attys. for Defendant.

Filed May 1, 1913, at 3:55 o'clock P. M. **[41]**

[Opinion of Supreme Court, Territory of Hawaii. Filed March 14, 1914.]

In the Supreme Court of the Territory of Hawaii.

October Term, 1913.

GEORGE E. WARD,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation.

ERROR TO CIRCUIT COURT, FIRST CIRCUIT.

Argued February 20, 1914.

Decided March 14, 1914.

ROBERTSON, C. J., PERRY and DE BOLT, JJ.

Master and Servant—Defective Appliance—Injury—Proximate Cause.—The defendant having negligently continued the use of a defective cable on its coal-conveyor which, by reason of

its defective condition, came off certain pulleys designed to hold it in position, and the plaintiff, an employee of the defendant on the conveyor, in attempting to restore the cable to its proper position was injured. The question, whether the proximate cause of the plaintiff's injury was the negligence of the defendant in failing to furnish a reasonably safe cable for use, is not a question of science or legal knowledge, but a question of fact for determination by a jury. [42]

Opinion of the Court by DE BOLT, J.
(PERRY, J., Dissenting.)

This is a writ of error to review a judgment of nonsuit entered in the Circuit Court of the First Circuit,—the sole assignment of error being the granting of the motion for nonsuit and entry of judgment thereon. The record sent up in response to the writ shows that George E. Ward, the plaintiff in error, hereinafter called the plaintiff, brought an action against the Inter-Island Steam Navigation Company, Limited, the defendant in error, hereinafter called the defendant, to recover damages in the sum of $50,000 for personal injuries sustained by him on July 8, 1912, as the result of the alleged negligence of the defendant while the relation of master and servant existed between them.

On and prior to the date of the accident which occasioned the injury to the plaintiff complained of in his action, the defendant, as a part of its business, maintained and operated in Honolulu a coal-con-

veyor used for the purpose of unloading coal from ships made fast to the wharf on which the conveyor was constructed. The conveyor consisted of an elevated double-track railway, circular at each end, about twenty-five feet in height above the wharf, and upon which railway coal-cars were moved by an endless steel cable about 2800 feet in length operated by an engine and drum situated under the conveyor on the wharf. The cable was held in position at the circular ends and curves of the railway by pulleys. Near the engine-house a weighted box was suspended on the cable for the purpose of keeping it taut when in use, which could be raised or lowered by block and tackle.

At the time of the accident the plaintiff had been in the employment of the defendant about eight years as machinist in its shops and as foreman at the coal-conveyor, occasionally going to sea as engineer on one of the defendant's boats. [43]

While the plaintiff was engaged at the conveyor as foreman his chief work was on the ships superintending the discharging of coal, but his duties also required him to go upon the conveyor, see that everything was in order, and to attend to the general working thereof.

In the view we take of the case it will not be necessary to enter into a detailed statement or analysis of the evidence. Suffice it to say, that the evidence adduced by the plaintiff tended to show that at the time of the accident and for a period of about three weeks prior thereto, the steel cable then in

use on the coal-conveyor was roughened by usage, small strands of wire about 1/16 of an inch in length projecting; that this roughness of the cable gave it a tendency when in motion to climb on the pulleys and hence a greater tendency to come off; that by reason of its condition it did come off the pulleys; that it was in a dangerous and unsafe condition; that it was unfit for the use and purpose required of it; that it had been in use about ten months; that the life of a cable such as the one in question was about eight months; that the defendant had notice, as well as actual knowledge, of the condition of the cable and promised the plaintiff that a new cable would be put in; that the plaintiff relying upon the promise of the defendant to put in a new cable continued in the performance of his duties; that on the day of the accident, while the plaintiff was engaged in the performance of his duties on a ship discharging coal, the cable came off the mauka four of the mauka series of eight pulleys, of which fact he was informed; that he immediately proceeded to the conveyor; in the meantime the engine which propelled the cable was stopped and the cable brought to rest; that upon reaching the place where the cable was off, the plaintiff, with the assistance of others, [44] endeavored to replace it by using crowbars to pry it back into position, when, suddenly, the cable came off the remaining pulleys of this series, struck him with great force and hurled him to the wharf below, a distance of about twenty-five feet, whereby he sustained serious and permanent injuries.

We will assume for the purposes of this opinion that the evidence adduced by the plaintiff showed that the defendant was guilty of negligence in furnishing a defective cable for use on its coal-conveyor.

At the close of the plaintiff's case the defendant moved for a nonsuit on the following grounds: (1) That the plaintiff had failed to show that the defendant was guilty of any negligence; (2) that the proximate cause of the accident was the plaintiff's own act; (3) that the plaintiff was guilty of contributory negligence; (4) that the plaintiff assumed all the risk of the employment which resulted in the accident.

While the Court below was of the opinion that the evidence adduced tended to show that the cable was defective, it held, however, that there was no evidence tending to show that the slipping of the cable from the pulleys at the time the plaintiff was endeavoring to restore it to its proper position was the result of the defective condition of the cable, and, therefore, granted the motion on the first ground. As to the second, third and fourth grounds of the motion, the Court held, and we think correctly, that they presented questions of fact for determination by a jury. As to the act of the plaintiff in attempting to replace the cable in the manner disclosed by the record, neither the Court below nor can this Court, as a matter of law, say that he was guilty of contributory negligence. The state of the evidence was such that different minds might honestly draw different conclusions from it; the questions thus presented being questions of fact [45]

clearly within the province of a jury to determine. Nuley v. Southwestern Cotton Seed Oil Co., 64 L. R. A. 145, 151; McGrath v. Texas & P. Ry. Co., 60 Fed. 553; George v. Clark, 85 Fed. 608.

The defendant contends that the defective condition of the cable was not the proximate cause of the plaintiff's injury, because, after it came off the pulleys and was at rest, its defective condition ceased to operate or have anything to do with the events which followed, admitting, however, that when it came off the pulleys while in motion, if it had then struck the plaintiff and injured him, it might properly have been claimed that the defective condition was the proximate cause of the injury.

The plaintiff, of course, contends that the negligence of the defendant in continuing the use of the cable in its defective condition was the primary and proximate cause of the accident resulting in his injury, and that the defendant, therefore, is liable. Upon the evidence as disclosed by the record now before us this question as to the liability of the defendant should have been submitted to the jury. 21 Am. & Eng. Ency. Law (2d ed.), 508; 2 Labbatt, Master and Servant, § 805.

Actionable negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such person would not have done. Grand Trunk Railway Co. v. Ives, 144 U. S. 408, 416; Baltimore & P. R. Co. v. Jones, 95 U. S. 439, 441; 1 Thompson on Negligence, § 1.

If the defendant failed to furnish the plaintiff

with a cable reasonably safe for the use and purpose required (and the evidence tends to show that it did so fail), then it was guilty of negligence; and (as suggested by counsel for the defendant), if the cable, when it came off the pulleys while in motion, had [46] struck the plaintiff and injured him, there could be no question as to his right to recover. The connection between the negligence and the injury would then have been direct, natural and continuous. Obviously, the negligence of the defendant would then have been the primary and proximate cause of the injury. The question now presented by the record, however, is, whether the negligence of the defendant in failing to furnish a reasonably safe cable was the proximate cause of the plaintiff's injury? In other words, was the injury the natural and probable consequence of the defective cable, and should it have been foreseen in the light of the attending circumstances? These, of course, are questions of fact, peculiarly within the province of a jury to determine.

In Milwaukee & St. P. R. Co. v. Kellogg, 94 U. S. 469, 474, Mr. Justice Strong said: "The true rule is that what is the proximate cause of any injury is ordinarily a question for a jury. It is not a question of science or of legal knowledge. It is to be determined as a fact, in view of the circumstances of fact attending it. The primary cause may be the proximate cause of a disaster, though it may operate through successive instruments, as an article at the end of a chain may be moved by a force applied to the other end, that force being the proximate cause

of the movement, or as in the oft-cited case of the squib thrown in the market-place. 2 Bl. Rep. 892. The question always is, Was there an unbroken connection between the wrongful act and the injury, a continuous operation? Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury? It is generally held, that, in order to warrant a finding that negligence, or an act not amounting to wanton wrong, is the proximate cause of an injury, it must appear that the injury was the natural and [47] probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances. * * * We do not say that even the natural and probable consequence of a wrongful act or omission are in all cases to be chargeable to the misfeasance or nonfeasance. They are not when there is a sufficient and independent cause operating between the wrong and the injury. In such a case the resort of the sufferer must be to the originator of the intermediate cause. But when there is no intermediate cause, the original wrong must be considered as reaching to the effect, and proximate to it. The inquiry must, therefore, always be whether there was any intermediate cause disconnected from the primary fault, and self-operating, which produced the injury. Here lies the difficulty. But the inquiry must be answered in accordance with common understanding. * * * In the nature of things, there is in every transaction a succession of events, more or

less dependent upon those preceding, and it is the province of a jury to look at this succession of events or facts, and ascertain whether they are naturally and probably connected with each other by a continuous sequence, or are dissevered by new and independent agencies, and this must be determined in view of the circumstances existing at the time."

It is fundamental, of course, that in an action founded upon the alleged negligence of a defendant, the negligence must be the proximate cause of the injury alleged; and it is also true, that where there is an "intermediate cause disconnected from the primary fault," such as an intervening human agency, "self-operating," which comes between the act of negligence and the injury, the negligence alleged is not the proximate cause of the injury, unless a reasonable and prudent person should have foreseen that his negligent act would set the intervening cause or human agency in motion. The crucial question, the pivotal fact, [48] in the case at bar is, therefore, whether the "primary fault," the negligence of the defendant, and the injury to the plaintiff are "naturally and probably connected with each other by a continuous sequence, or dissevered by a new and independent agency." This is not a question of science or legal knowledge, but a question of fact for a jury to "answer in the light of all the attending circumstances, and in accordance with common sense and understanding." 29 Cyc. 499, 500; Watson, Damages for Personal Injuries, §§ 32, 36, 58, 62, 177; Southern R. Co. v. Webb, 59 L. R. A. 109, 112; City of San Antonio v. Porter, 59 S. W.

922; Shippers' Compress & Warehouse Co. v. Davidson, 80 S. W. 1032; Gudfelder v. Ry. Co., 207 Pa. 629; Hampson v. Taylor, 15 R. I. 83; Mahogany v. Ward, 16 R. I. 479, 483; St. Joseph & G. I. R. Co. v. Hedge, 44 Neb. 448, 458; Purcell v. St. Paul City Ry. Co., 48 Minn. 134; Missouri K. & T. Ry. Co. of Texas v. Raney, 99 S. W. 589.

In Chicago R. I. & P. R. Co. v. Moore, 43 L. R. A. (N. S.) 701, 706, a case analogous to the case at bar, the plaintiff was employed by the company as a fireman on one of its locomotive engines, which was sent out in a defective condition, and while out on the road got out of order. An examination disclosed that the "eccentric" was broken. It was the duty of the plaintiff to make emergency repairs while on the road. While engaged in making the repairs, the "straps," which fastened the "eccentric" to the axle, broke and injured the plaintiff. The Court said (p. 706): "But in this case the repairs, under the circumstances, were made necessary by the negligence of the company, and enhanced the risk of the injury. The intervention of the act of the plaintiff between the negligence of the company and the injury should have been anticipated. When the engine broke, it became necessary to repair. The plaintiff could not go off and leave it. It should have been foreseen that he would attempt to remedy the defect and thereby incur the risk of injury. The defendant is charged with [49] knowledge of the defect, and knowing the defect it must have known that some sort of injury was likely to result. It must have known that if nothing worse happened the shaft

would break, and that it would be necessary to repair it, and thereby the risk of injury would be enhanced. It is true, as argued by the defendant, the plaintiff could have gone off and left the engine, but it should have been so anticipated that he would not do so, and that he would attempt to repair it just as he did."

The case at bar is clearly distinguishable from those cases wherein the injury was the result of an independent intervening cause. Pass Ry. Co. v. Trich, 117 Pa. 390; McFarlane v. The Town of Sullivan, 99 Wis. 361; 29 Cyc. 499, 500; Elliott v. Allegheny County Light Co., 204 Pa. 568; Cole v. German Sav. & L. Soc., 63 L. R. A. 416.

The questions presented by the evidence in the case at bar, as disclosed by the record before us, and which should have been submitted to the jury for determination, are, in effect, whether it was the duty of the defendant to have foreseen that the cable, by reason of its defective condition, would come off the pulleys; whether the plaintiff would thereupon attempt to restore it to its proper position; and whether the injury sustained by the plaintiff was the natural and probable consequence of the defendant's negligence. In other words, whether or not the intervening cause —the human agency—was set in motion by the defendant's negligence.

The plaintiff also claims that his injuries were caused by the lack of a guard-rail and platform at the head of the conveyor—the place where the accident occurred.

It appears from the record that the plaintiff was fully aware of the condition of the conveyor when he

accepted employment thereon and at all times during his employment, and that he had [50] never made any complaint concerning it. There is nothing in the evidence tending to show that he continued in his work relying upon any promise to change the condition of the conveyor in the respect mentioned. Whatever the risks were, we think under the circumstances disclosed by the record, the plaintiff assumed them.

The plaintiff having made out a *prima facie* case was entitled to have it submitted to the jury.

The judgment of nonsuit is reversed, a new trial is granted and the cause remanded with directions to deny the motion for nonsuit.

E. A. DOUHITT (DOUTHITT & COKE on the brief), for Plaintiff.

C. R. HEMENWAY, I. M. STAINBACK and W. L. STANLEY (SMITH, WARREN, HEMENWAY & SUTTON and HOLMES, STANLEY & OLSON on the brief), for Defendant.

A. G. M. ROBERTSON.
J. T. DE BOLT. [51]

Judgment [of Supreme Court, Territory of Hawaii, Filed March 25, 1914.]

DISSENTING OPINION OF PERRY, J.

While concurring in what is said in the foregoing opinion on the subject of the assumption by plaintiff of the risks incident to the lack of a guard-rail and a platform at the head of the coal-conveyor, I

I respectfully dissent from the view that the question of proximate cause should have been submitted to the jury and from the conclusion that a nonsuit was incorrectly ordered.

There is no doubt that what is the proximate cause of an injury is ordinarily a question for a jury; but when the facts are all undisputed and the inferences necessary to sustain the plaintiff's case are not legally deducible from those facts, the question is solely one of law for the Court. Teis v. Smuggler, Mining Co., 158 Fed. 260, 269; Jennings v. Davis, 187 Fed. 703, 713; Clark v. Wallace, 51 Colo. 437, 439. In the case at bar the question was, in my opinion, one of law for the Court.

There was, it is true, evidence tending to show that the cable in its worn and frayed condition had a "tendency to climb" on the pulleys and thus to leave them and that the defendant was therefore guilty of negligence in continuing the use of the cable; and if in leaving the pulleys for this reason the cable had caused injury to an employee without any fault of the latter, the negligence would clearly have been the proximate cause of the injury and the defendant would have been liable. But although in the instance under consideration the cable did (always assuming, as we must, that the plaintiff's evidence was true) leave four of the pulleys in consequence of its defective condition, no one was injured thereby. That fact is beyond dispute. The cable was stopped and it was only after it was entirely at rest that the plaintiff attempted to replace

it behind the pulleys and in the attempt received the injuries complained [52] of. There is not the slightest evidence to support a finding that the defective condition of the cable contributed in any degree to its leaving the second set of four pulleys or to its slipping from the crowbars then being used to restore it to its proper place. For aught that is made to appear to the contrary by the evidence, the slipping of the cable from the second set of pulleys and its hurling of the plaintiff to the dock below may have been either a pure accident or the result of plaintiff's own negligence. The burden was upon the plaintiff to make a *prima facie* showing that the fall was caused by some negligence of the defendant and was not a mere unavoidable accident.

The proximate cause of an injury may be distant in time and in place, it may operate through successive instruments, but to be such it must appear that the injury was the natural and probable consequence of the negligence or wrongful act and that it ought to have been foreseen in the light of the attending circumstances. R. R. v. Kellogg, 94 U. S. 469, 474. "A natural consequence of an act is the consequence which ordinarily follows it—the result which may be reasonably anticipated from it. A probable consequence is one that is more likely to follow its supposed cause than it is to fail to follow it." Cole v. German Savings & Loan Soc., 124 Fed. 113, 115. In a general sense every act or event leads up to and is the cause of some subsequent act or event and, inversely, every act or event

is in some degree influenced by and is the consequence of some earlier act or event. But in that broad sense causes and consequences are unknown in the law of negligence. Certainly in the law, justice and expediency require the imposition of narrower limits in the field of recovery and it is therefore well established that "a prior and remote cause cannot be made the basis of an action if such remote cause did nothing more than furnish the condition or give [53] rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause of the injury." 29 Cyc. 496; R. R. v. Columbia, 65 Kan. 390, 399. In the case at bar there was no casual connection, within the meaning of the rule, between the defendant's negligence in using the defective cable and the plaintiff's injury. With the bringing of the cable to rest, the continuity in the chain of events was broken. As far as is disclosed by the evidence, either a pure accident or the plaintiff's negligence, following the plaintiff's act in attempting to replace the cable, was the proximate cause of the injury. The defendant's negligence and the consequent leaving of the first four pulleys by the cable merely furnished the condition or gave rise to the occasion by which the injury was made possible and any finding by a jury to the contrary would find no support in the evidence. So also did the defendant's employment of plaintiff, plaintiff's acceptance of that employment and defendant's erection and maintenance of the coal-conveyor give rise

to the occasion and yet none of these could properly be regarded as the proximate cause of the injury.

It seems to me that the jury would not be justified in declaring that plaintiff's fall was the natural and probable consequence of the continued use of the defective cable, in other words, in charging the defendant with the duty of foreseeing the fall, any more than in holding that it should have foreseen that plaintiff in hastening to the spot where the cable was off the pulleys would stumble and fall to the dock below or that the man in charge of the engine in attempting to stop the machinery and thus bring the cable to rest would have his hand caught in the machinery, requiring amputation of a part of the arm. **[54]**

The plaintiff, who was a skilled engineer and machinist and was entirely familiar with the coal-conveyor and its operation, in accepting the employment assumed its ordinary risks. Kohn v. McNulta, 147 U. S. 238, 241; Tuttle v. R. R., 122 U. S. 189, 195, 196. As far as the evidence discloses this was one of them. It is not made to appear that the accident could not as well have happened with a non-defective cable at rest as with a defective cable at rest, or, in other words, that the defective condition contributed to the accident. The burden was on the plaintiff throughout to establish a *prima facie* case.

Much reliance is placed by plaintiff upon the case of R. R. v. Moore, 43 L. R. A., N. S., 701, decided by the Supreme Court of Oklahoma. Possibly that

case can be distinguished in its facts from that at bar. The engineer, whose main duty was to operate the engine on the road, was said by the Court to be under a duty to repair "only in cases of emergencies such as the company by reasonable care could not provide against"; and the Court in its opinion (pp. 705, 706) expressly made the reservation that, "neither could an employee regularly engaged in repairing the machinery of the company recover for an injury received as the one complained of here, however negligently the necessity for repairs might have been caused, because it was his regular business to repair and the danger in his employment was exactly the same, whether the repairs were made necessary by negligence or accident." In the case at bar the undisputed evidence is that the plaintiff was regularly engaged in repairing the machinery of the conveyor, just as he was regularly engaged in superintending its operation. It was his regular business to repair, whether the repairs were made necessary by accidents resulting from negligence or by causes not involving negligence; and the danger in his employment was exactly the same in the one [55] class of repairs as in the other. The case at bar would seem to fall, not within the principle of the actual decision in the Moore case, but within the principle of the reservation. If, however, the cases are not thus distinguishable and if the Court in the Moore case goes to the extent of holding that upon facts such as exist in the case at bar the defendant's negligence was the proximate cause of the injury, it does not appeal

to me as sound and I respectfully decline to follow it.

In my opinion the plaintiff failed to show that the defendant was guilty of any negligence which could have been properly found by the jury to have been the proximate cause of the injuries complained of and the motion for a nonsuit was properly granted.

ANTONIO PERRY.

Filed March 14, 1914, at 10:15 A. M. [56]

In the Supreme Court of the Territory of Hawaii.

October Term, 1913.

GEORGE E. WARD,

Plaintiff in Error,

vs.

INTER-ISLAND STEAM NAVIGATION CO., LTD., an Hawaiian Corporation,

Defendant in Error.

Judgment.

ERROR TO CIRCUIT COURT, FIRST CIRCUIT.

In the above-entitled cause pursuant to the opinion of the above-entitled court, filed March 14, 1914, the judgment of nonsuit is reversed, a new trial is granted and the cause remanded with directions to deny the motion for nonsuit.

Dated, Honolulu, T. H., March 25, 1914.

By the Court.

[Seal] J. A. THOMPSON,

Clerk Supreme Court.

Filed March 25, 1914, at 2:45 P. M. [57]

Instruction No. 1a.

Refused, W. J. R.

I instruct you, gentlemen of the jury, that there is no evidence tending to prove that the negligence of the defendant, if any, was the proximate cause of the injuries sustained by the plaintiff, and that your verdict must be for the defendant. **[58]**

In the Circuit Court of the First Circuit, Territory of Hawaii.

January Term, 1914.—ROBINSON, 3d Judge, Presiding.

L. 7721.

GEORGE E. WARD,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation.

Verdict.

TRESPASS ON THE CASE.

We, the Jury in the above-entitled cause, find for plaintiff, and assess and award damages in the sum of THIRTEEN THOUSAND DOLLARS.

(S) ROBERT M. MORTON,
Foreman.

Dated Honolulu, T. H., June 19th, 1914.

Filed at 10:50 o'clock P. M., June 19th, A. D. 1914. **[59]**

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,

Defendant.

Motion for New Trial.

Comes now the defendant herein, by its attorneys, Holmes, Stanley & Olson and Smith, Warren, Hemenway & Sutton, and moves for a new trial in the above-entitled cause on the following grounds:

1st. That the verdict returned herein on the 19th day of June, 1914, is contrary to the law and the evidence and the weight of the evidence;

2d. That the damages awarded by said verdict are excessive and not justified by the evidence given in said cause;

3d. That the Court erred in admitting evidence offered by plaintiff, the defendant duly noting exceptions to the rulings of the Court thereon, as appears by the transcript of evidence herein;

4th. That the Court erred in rejecting evidence offered by defendant, the defendant duly noting exceptions to the rulings of the Court thereon, as appears by the transcript of evidence herein.

The transcript of the stenographer's notes, the record of the clerk and all the exhibits, papers and

files herein are referred to **[60]** and made a part of this motion.

Dated: Honolulu, T. H., June 27th, 1914.

INTER-ISLAND STEAM NAVIGATION CO., LTD.,

By HOLMES, STANLEY & OLSON,
SMITH, WARREN, HEMENWAY & SUTTON,

Its Attorneys.

Filed Jun. 27, 1914, at 11:10 o'clock A. M.
Monday, Jun. 29, 1914. Motion denied.

(S) M. T. SIMONTON,
Clerk. **[61]**

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,

Defendant.

Judgment [of Circuit Court, Territory of Hawaii].

This action came on regularly for trial before the Honorable WILLIAM J. ROBINSON, Third Judge of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, on the 22d day of May, A. D. 1914, the plaintiff herein appearing in person and by his attorneys, Messrs, Douthitt & Coke, and the defendant appearing by its attor-

neys, Messrs. Smith, Warren, Hemenway & Sutton, and Messrs. Holmes, Stanley & Olson; a jury of twelve men was duly and regularly impaneled and sworn to try said cause; witnesses on the part of plaintiff and defendant sworn and examined; and after hearing the evidence, the arguments of counsel, and instructions of the Court, the jury did, on the 19th day of June, A. D. 1914, retire to consider their verdict. That subsequently, on said last mentioned day, said jury returned into court and being called answered to their names and said:

"We, the jury, in the above-entitled cause, find for the plaintiff, and assess and award damages in the sum of Thirteen Thousand Dollars.

(Signed) ROBERT M. MORTON,
Foreman." **[62]**

WHEREFORE, by virtue of the law, and by virtue of the premises aforesaid, it is ORDERED, ADJUDGED and DECREED that the said GEORGE E. WARD, plaintiff herein, do have and recover from the said INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian corporation, defendant herein, the sum of THIRTEEN THOUSAND ($13,000.00) DOLLARS, together with said plaintiff's costs and disbursements incurred in this action amounting to the sum of NINETY-SEVEN and 20/100 ($97.20) DOLLARS.

DONE IN OPEN COURT, at Honolulu, City and

County of Honolulu, Territory of Hawaii, this 29th day of June, A. D. 1914.

[Seal] (S) W. J. ROBINSON,

Third Judge of the Circuit Court, First Judicial Circuit, Territory of Hawaii.

Filed Jun. 29, 1914, at 9:45 o'clock A. M. [63]

385.

GEORGE E. WARD

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED.

VOL. I. [64]

No. 817. Received and filed in the Supreme Court, Dec. 24, 1914, at 3:15 P. M. Robert Parker, Jr., Assistant Clerk.

CIRCUIT COURT.

Dec. 24, 1914.

FIRST JUD. CIRCUIT. [65]

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[Opening Statement of Mr. Douthitt.]

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

January Term, 1914.

May 25, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY,

Defendant.

Jury empaneled and sworn.

Opening statement of Mr. Douthitt.

Mr. DOUTHITT.—Gentlemen of the jury, we expect to show to you in this case that plaintiff, George E. Ward, at the time of the accident and injury complained of in the complaint was a mechanic employed in the Inter-Island Steam Navigation Company's shops on River street, near the waterfront; that he had been employed for some seven or eight years past by the Inter-Island Steam Navigation Company; that most of the time he was engaged as a machinist or mechanic in the shops of the Inter-Island Company; that he earned about one hundred and fifty dollars per month, on an average; that he was about forty years of age at the time of the accident; that the Inter-Island Steam Navigation Company, as part of their business, maintained a coal-conveyor at a point along the waterfront near

or opposite the Honolulu Iron Works; that the coal-conveyor was laid on a circular track and started in at the sea end and went around by curves until it got to a place in the yard where the coal was dumped; that the coal was loaded at the extreme Waikiki side of the coal-conveyor from the ships, the coal ships that came in; that it was taken by means of cranes and cars, buckets of coal being taken up and dumped into the hoppers on the Waikiki side or on the left-hand [68*—1†] side as you look towards the sea and then put into cars under the house and as they were loaded the grips were put onto the cable and by such means cars were drawn along the track until they reached a point at the extreme north or mauka end of the coal-conveyor, which was called the coal-yard. These cars were first weighed at the scale. There was a scale-house and after being weighed the car loaded with coal was taken along on the Waikiki side of the track and then dumped, automatically dumped, in the coal-yard. The construction of the cars was such that in the center there was, you might call it a cone, forming an angle something as I have my hands here, and on the sides of the car these sides opened out allowing all of the coal which was on that incline or decline to dump overboard into the coal-yard. They were automatically dumped. No person is of course required around there to dump them. After the coal had been dumped from the

*Page-number appearing at foot of page of Original Certified Transcript of Record.

†Original page-number of Testimony as same appears in Original Certified Transcript of Record.

car, the car then proceeded around the head of the coal-conveyor and the coal-yard and came around on the Ewa side of the track and then waited its turn until such time as it was necessary to load the cars at the Waikiki side, then it was gripped on the cable and it pursued its way along on the Waikiki side performing the same operation as before, being dumped in the coal-yard and returning on the Ewa side. That was the system which was adopted.

We further expect to show you, gentlemen, that Mr. Ward, the plaintiff in this case was engaged on the coal-conveyor as a foreman when coal ships were in; at other times he was engaged in the machine-shops of the Inter-Island Steam Navigation Company. That when a coal boat was in he was down in the hold of the ship superintending the discharge of the coal, the unloading of the coal into buckets which were taken up by the crane and dumped into the hoppers. That that was his principal duty. Very seldom or only upon occasion was he called to go on top of the coal-conveyor. That about a month before this accident the attention of Mr. Gedge, who was the secretary and treasurer of the Inter-Island Steam Navigation Company, was called to the condition of [69—2] this cable. It was worn, it was frayed and stranded, strands had come out. At that time we expect to show, gentlemen, that there was no coal boat in, and the way that the attention was drawn to it was, that there was the drum around which the cable was rove at the engine which propelled the cable was worn, and at that time Mr. Ward, the plaintiff in this case,

called Mr. Gedge's attention to the fact that the cable was not in a proper condition, that the strands were coming out, that it was old and worn and advised a new cable being put in. That Mr. Gedge, the secretary and treasurer of the company told Mr. Ward, never mind about the new cable, we will get along with that, but we will put in a new drum. That Ward was under the directions of Gedge and could do nothing down there until he was ordered to do it. Ward was then taken from the machine-shop and they put in a new drum, but no new cable was put in because Mr. Gedge said there was no necessity for putting it in. That between two and three weeks after that a coal boat came in, that is, a foreign boat loaded with coal. Sometimes such boats are loaded with four, five and six thousand tons. That the cable was being used constantly from seven o'clock in the morning until the afternoon in that condition; that it had got off on one occasion from the pulleys at the extreme makai end due to its defective condition because the strands caught or rose on the pulleys. It slipped off the dollies or pulleys on four or five occasions prior to the accident. That three days or more, particularly on Saturday,—the witnesses will call it three days because they figure Saturday one day, Sunday one day and Monday one day,—the accident happened on Monday, July 8th, 1912,—that three days before the accident or more particularly on Saturday the cable came off the pulleys again; that there was no way of that cable coming off the pulleys save and except its defective condition. It frequently came off in the coal-yard

due to lumps of coal falling on the track. That it came off on this occasion Saturday; that the workmen attempted to restore it which they [70—3] did; that after the cable had started up again and operations were resumed it was seen that the cable had a tendency to lift up on the pulleys as it was going around which was not the case with a good cable, and it was seen that the condition of the cable,—the poor and stranded condition of the cable was such as to make it come off; that Mr. Ward, the plaintiff in this case, went upon the coal-conveyor for the purpose of seeing what made this cable come off on that occasion and he saw that it was due to the stranded and barbed condition of the cable when he saw it in operation; that he then consulted with Mr. Gedge, the secretary and treasurer of the company and told him the condition of the cable and asked him to put a new cable in; that Mr. Gedge promised him that he would put in a new cable and that the plaintiff in this case, Mr. Ward, relied upon the promise of Mr. Gedge that he would put in a new cable; that it would take a day or thereabouts to install a new one; that Sunday could have been utilized for that purpose; that Mr. Ward, relying upon the promise of the secretary and treasurer of the company under whose instructions he was acting that a new cable would be put in went to work in the usual way on Monday morning the day of this accident; that he did not go upon the coal-conveyor because his duties called him upon the ship to superintend the discharging of the coal; that between nine and ten o'clock on the morning of the 8th day of

July, 1912, on Monday morning, suddenly his attention was called to the fact that the cable was off. And if anything went wrong with the coal-conveyor he was supposed to put it back, that was his duty to fix it temporarily. That he went up there and he saw that the cable was off four pulleys, due as we contend to its defective condition; that he began with the other workmen, attempted to restore the cable to its proper position around the pulleys in order that work might be resumed and while being in the act, there being slack enough to put the cable back there, apparently slack enough to put it back to its position, the cable suddenly flew out [71—4] from all the pulleys carried Mr. Ward overboard down onto the dock below which was a distance of about twenty-five feet and he landed on his head and suffered a fracture of the skull, suffered a concussion of the brain and suffered a distortion of the spine and also suffered a fracture of the pelvic bones, the cup that holds up the entire body. You have seen a skeleton where the bones of the hip socket into the pelvic bones which is really the cup that holds up the body, this was fractured by the force with which he was hurled through the air, to the dock below.

We will also show you, gentlemen, that at the time of the accident and prior to the accident there was absolutely no protection at the end of the coal-conveyor; that there was neither platform nor rail there and nothing to impede his progress as he went through the air; that he was hurled overboard due as we contend to the continuing in use of a defective cable, known to be defective by the company and of

which they had been advised some three weeks or a month prior to the date of this accident.

We will show you, gentlemen, by the medical testimony that as a result of these injuries that he sustained by reason of the negligence of this company that Mr. Ward is a cripple for life; that he will never recover, can never pursue his usual avocation of machinist and mechanic; that he knows no other trade or any other business and was relying upon that and was relying upon it for his means of livelihood and support.

If we show you these facts, gentlemen of the jury, as we contend, that the defective condition of the cable was the cause of this accident to Mr. Ward and that he was injured in the manner in which we have described we expect at your hands a substantial verdict in his behalf.

(The COURT, counsel and jury visit the scene of the accident.)

Mr. DOUTHITT.—We will simply put Mr. Ward on at the present time for the purpose of proving this model. **[72—5]**

Mr. STANLEY.—Yes.

[Testimony of George E. Ward, for Plaintiff.]

Direct Examination of GEORGE WARD, called for the plaintiff, sworn.

The CLERK.—Your name, please.

A. My name?

Q. Yes. A. George Edward Ward.

Mr. DOUTHITT.—Mr. Ward you are the plaintiff in this case?

(Testimony of George E. Ward.)

A. I am.

Q. Who constructed this model representing a coal-conveyor or a section of coal-conveyor belonging to the Inter-Island Steam Navigation Company? A. I did.

Q. I will ask you whether or not it is a correct representation of the coal-conveyor of the Inter-Island Steam Navigation Company? A. It is.

Q. I observe at the makai end a number of pulleys or dollies and I will ask you whether the construction of these pulleys or dollies differs in any respect from the construction of the pulleys and dollies of the Inter-Island Steam Navigation Company, on the 8th day of July, 1912?

A. In their position they do not differ but in the number of pulleys they differ.

Q. That is to say, there were how many pulleys around here for example, we will exclude the eight pulleys the first eight, how many pulleys were there at that time excluding the first eight?

A. There was sixty around that big curve there.

Q. Sixty around the big curve? A. Yes, sir.

Q. At the makai end? A. At the makai end.

Q. How many pulleys were there at the beginning of the curve on both sides? A. Eight. [73—6]

Q. On each side?

A. On each side, eight on each side.

Q. Now, with regard to planking at the extreme makai end of the coal-conveyor I will ask you whether this model correctly represents the condi-

tion at that time? A. Yes, sir, it does.

The COURT.—Is that model built to scale, Mr. Ward?

A. It is built to scale as each one of these is about three inches apart that represents ten feet.

Q. It is built to scale?

A. Yes, sir, as near as I could get it to a scale, such a fine figure.

Mr. DOUTHITT.—I will call your attention to the model of the coal-conveyor at the extreme makai end and I will ask you whether this model is in the same condition as it was on the date of the 8th day of July, 1912? A. Yes, sir.

Q. Where on the model is the place representing the scale-house? A. Right here, about here.

Q. Right immediately over the drum?

A. Yes, sir.

Mr. DOUTHITT.—Let us mark the scale-house.

Q. It extended right across?

A. Right across and open for the cars to pass through.

Q. Then the scale-house is over here like that is it not?

A. It extends—it is all one house with two scales in.

Q. I call your attention, Mr. Ward, to the small paper box under the position which you have designated as a scale-house, what does that represent on the model?

A. That represents the artificial means for taking

(Testimony of George E. Ward.)

the slack from the drum.

Q. Is this what they call the weight?

A. That is the weight, called the weight.

Q. Now, there is something lacking in this weight with regard to the weight which was used on the coal-conveyor of the Inter-Island Steam Navigation Company, what is that that is lacking?

A. It is lacking a chain that is connected here.

Q. From the bottom of the box?

A. With a chain, that is **[74—7]** connected to the wharf with a timber crossing this way with an eye-bolt, there is a chain.

Q. What is the purpose of the chain?

A. The purpose of that chain is to keep this whole weight and the whole thing from coming up here, what we call two blocks and striking up against one another and breaking the sheaves.

Q. Now, I observe two towers a representation of two towers on this model; what is the purpose of those towers?

A. The purpose of those towers is for taking the coal out of the ship's hold raising up to the boom and then running it in and dumping it into a hopper here.

Q. Where is the hopper?

A. The hopper is situate projecting out here about this far that the coal dumps into.

Q. About this far. I call your attention—

A. Projecting of the hopper out here.

Q. From what portion of the coal-conveyor?

A. From this portion of the coal-conveyor.

(Testimony of George E. Ward.)

Q. From the steel structure itself?

A. From the steel structure itself.

Q. This is built of steel, I understand you?

A. Yes.

Q. We are calling attention to the makai tower and mauka tower, do they both serve the same purpose? A. Yes.

Q. For the purpose of taking the coal up in buckets then slinging it around in place where it is required and dumping it into the hoppers?

A. No, sir, it runs it in.

Q. Run it in by means of what?

A. By weight of the bucket will work itself in by working itself in here and when it is in position to dump the bucket is opened and the coal dumped into the hopper.

Q. I notice on the model two little—I don't know what you call those. A. Dollies. **[75—8]**

Q. What is the purpose of those?

A. For running out the bucket over the hold and letting the bucket come back to the hopper.

Q. There are two wheels missing on each one of these dollies at the present time? A. Yes.

Q. Where are the means of starting and stopping the drum, controlling and carrying the cable located? A. Right about a little bit mauka.

Q. In the scale-house?

A. No, sir, up on the platform. There was a wheel there with a rod is connecting down until it comes onto the throttle.

(Testimony of George E. Ward.)

Mr. DOUTHITT.—And we will mark that point A.

That is A, that is correct, is it?

A. Yes, sir.

Q. It is where the rod is which connects with the throttle to start and stop the engine which propels the cable? A. Yes, sir.

Q. Now, Mr. Ward, will you please explain to the jury by means of this model where these ropes—where the wire rope goes and through what it goes before it continues on its way over to the coal-yard? Do you understand what I mean, gentlemen? Explain the working of that cable on the model as compared with conditions as they exist down there.

A. This is the hauling cable, it runs here and goes down these sheaves and down to the drum at the engine. It has got four turns around that drum, from there it goes through this sheave here down to the sheave of the box, back again to the sheave here, then to this sheave, then to this sheave represented here and from there it goes on down around the coal-yard all the way around, returns back again on this Ewa track until the cars, the empty cars get up, on the makai end and is stopped mauka of the tower.

Q. Are the towers in proper position now?

A. No, sir, this tower should be here. [76—9]

Q. I am just asking you to explain the model to the jury where the cable is, that is all.

A. Then the cable comes around these pulleys here on the Waikiki side from those pulleys and

goes on the Ewa side of these pulleys around the large curve.

Q. That is around the sixty pulleys?

A. Around the sixty pulleys. After it comes off the sixty pulleys then it goes on the Ewa side on these eight pulleys.

Q. The Ewa side or insides?

A. The Ewa or inside of the eight pulleys.

Q. And is that the same with regard to the other end of the coal-conveyor, this end here?

A. This end here is the same as the other end in the coal-yard.

Q. Now, Mr. Ward, you have said that this part of the cable which I am holding in my hand, that is the main cable running down from the makai end to the first sheave on the conveyor which is at a position mauka of the scale-house?

A. Mauka of the scale-house.

Q. Is what you call the hauling cable?

A. Yes, sir.

Q. Now, what do you call the other portion of the cable?

A. This portion here I call it the tail rope. The tail rope it is always behind the cars.

Q. Then the hauling cable goes down through the sheave? A. Down through that sheave.

Q. At a point marked B, down around the drum about which it is wound four times?

A. Four times. There are four turns on the drum.

Q. Then still the hauling cable proceeds around a

(Testimony of George E. Ward.)

sheave? A. Yes, sir.

Q. Immediately above the weight or box?

A. Yes, sir.

Q. Down under another sheave which connects the weight or box to the hauling cable?

A. To the tail rope. [77—10]

Q. Where does your tail rope begin, what portion of the coal-conveyor or cable, of the conveyor or cable, what do you mean by the tail rope?

A. The tail rope begins behind the car leaving,—in fact the tail rope is behind all cars in motion.

Q. Then it is in behind the cars that are in motion after they drop—after they pick up the new cable?

A. In picking up the new cable you are asking?

Q. You drop the cable and pick up what?

A. Then you pick up the tail rope.

Q. Which is going in the same direction?

A. Same direction.

Q. Then that portion of the cable which you referred to as the tail rope is the portion of the cable which the cars have gripped after becoming detached from the hauling cable at the scale-house?

A. At the scale-house.

Q. Yes. When they are detached from the hauling cable at the scale-house and the grip of the car is put on another cable that is what you call the tail rope, is that so?

A. Yes, sir, behind that car that has been connected with the cable.

Mr. DOUTHITT.—Of course, if your Honor please, we reserve the right of calling Mr. Ward

(Testimony of George E. Ward.)

later in the case in chief. This is only for the purpose of proving the model.

Mr. STANLEY.—There will be no objection to that.

Mr. DOUTHITT.—We offer the model in evidence and ask that it be marked Plaintiff's Exhibit "A."

Mr. STANLEY.—No objection to its going in. I would like to examine Mr. Ward.

The COURT.—The model may be received in evidence and marked Plaintiff's Exhibit "A."

[78—11]

Cross-examination of GEORGE E. WARD.

Mr. STANLEY.—Mr. Ward, you told the judge that this model was drawn practically to scale?

A. Practically to scale.

Q. You don't mean that these towers, for instance, are placed on this conveyor according to scale? A. No, sir.

Q. That there is no such distance as is represented here between the towers as it was at the time of your accident and as it is shown here, it was much nearer makai was it not, the tower?

Mr. DOUTHITT.—That is going into the case in chief.

Mr. STANLEY.—I am asking in order to elicit the fact as to where it should be.

Q. Anyhow, Mr. Ward, it does not purport to show the position of the towers at the time of your accident?

A. Do you mean, Mr. Stanley, where that tower is standing now?

(Testimony of George E. Ward.)

Q. Yes. A. By scale?

Q. Yes.

A. No, I have not got those by scale.

Q. All these towers represent is the way they are placed on the upper rails?

A. No, it represents that these towers set on the upper part of the rail and can be shifted.

Q. And can be what?

A. Can be shifted, can be moved.

Q. Besides the chain which you say is on the box down there at the wharf you have also attempted to place on your model the block and tackle by which that weight can be raised or lowered?

A. Why, when we raised the box we raised it by means of the block and tackle.

Q. A block and tackle was there all the time was it not, that is not shown on the model?

A. It is not shown on the **[79—12]** model.

Q. If it were a correct model it would be there, wouldn't it?

A. The model is a model of the coal-conveyor, representing the coal-conveyor on the wharf, not the yard, not going from the wharf to the yard, but it is representing the coal-conveyor that is on the wharf.

Q. But if it is a correct model, if you are putting in a weight you would necessarily put in a block and tackle by which that weight can be raised and lowered?

A. I don't understand you now, Mr. Stanley. I understand the English part of it but—

(Testimony of George E. Ward.)

Q. This purports to show the weight, does it not?

A. Yes.

Q. This cardboard box? A. Yes.

Q. But in the coal-conveyor it is connected with that weight, there was a block and tackle which could be used for lowering and raising that weight?

A. Up on this here.

Q. Yes, the block and tackle and rope, the tackle being fixed around these uprights?

A. The hauling.

Q. Yes, hauling?

A. Yes, but the tackle was not connected to the box.

Q. Oh, no. Your model also is defective, is it not, Mr. Ward, in the fact that you do not show in the track around the track-rollers over which the cable passes?

A. I show on this model these pulleys where the pulleys goes round the curves.

Q. Yes, but you do not show—I will ask you is it not a fact that on the coal-conveyor there are rollers at intervals of some fifty feet or so and situated in the middle of the track over which the cable passes?

A. There are rollers situated all along the track.

Q. And they are not shown here?

A. They are not shown here, no, sir. [80—13]

Q. Now, when you speak of the tail rope and a hauling rope you don't want the jury to understand, do you, that there are two ropes? A. No, sir.

Q. It is all one continuous rope, is it not?

A. It is an endless rope.

(Testimony of George E. Ward.)

Q. It is an endless rope? Now, you speak of the tail rope as always behind the cars?

A. Yes, we call that the tail rope because it is behind the car going into the yard and behind the cars that is in motion.

Q. But is not that tail rope—we have left the scale-house—is not the tail rope the rope which moves the cars on which the rope moves?

A. No, it is the hauling side of that car, not the tail side of the car.

Q. You call one part of it a hauling rope until it goes to the scale-house, that is the hauling rope, is it not, that brings the car to the scale-house?

A. That is the hauling cable that brings that car to the scale-house.

Q. And it is the tail rope is it that takes it around to the coal-yard? A. No.

Q. The same rope?

A. They have the tail rope, that part of the tail rope, this car is not connected onto that. So it is the tail rope of this car which is in motion after this car is gripped, then it is the tail rope behind that car. That is the meaning of the tail rope.

Q. It is the same old rope?

A. It is an endless rope.

Q. Just describe to the jury exactly what this throttle attachment is that you say should appear at the point marked A.

A. The attachment. The throttle is down in the engine-room, so to have it so that the man can stop it above there is a fork in that and that continues up

(Testimony of George E. Ward.)

here and a good wheel is put on that so that they can immediately shut the steam off on top, **[81—14]** he does not have to run down to the throttle to shut off the steam.

Q. Situate about ten feet away from and mauka of the scale-house?

A. It is mauka of the scale-house, how far I could not tell you, I never measured it.

Q. About how far, Mr. Ward, you know the place very well; it is about ten feet, is it not?

A. I could not say for sure, may be between eight and ten and eleven, somewhere around there.

Q. And there is a wheel there which is operated by hand and which either starts or stops the engine; when they shut the steam the engine is stopped and when they open the steam the engine starts?

A. Yes, sir.

Q. And it is done with a turn of the wrist?

A. Yes, sir.

The COURT.—What was the motive power, Mr. Ward, employed on the 8th day of June, 1912, in the operation of that cable? A. Steam.

Mr. STANLEY.—We, of course, reserve the full right of cross-examination.

Q. Unless my eyesight deceives me these pulleys—you call them— A. Pulleys.

Q. They appear to me as if the face of them were perpendicular, straight up and down, is that the condition of the pulleys on the conveyor?

A. What is that?

Q. It appears to me as if you had drawn these pul-

(Testimony of George E. Ward.)

leys as if the face were perpendicular?

A. They are not perpendicular.

Q. Are they intended to be represented as perpendicular?

A. They are not perpendicular, they are cone shaped.

Q. Tapering down towards the bottom?

A. Towards the bottom, yes.

Q. That is, they are wider at the top, and they taper down to the flange?

A. Taper down to the flange, yes, sir. **[82—15]**

[Testimony of James Merseberg, for Plaintiff.]

Direct examination of JAMES MERSEBERG, called for the plaintiff, sworn.

Mr. DOUTHITT.—Where do you reside, where do you live, Mr. Merseberg? A. Out at Kalihi.

Q. Where? A. Kalihi, at Kalihi.

Q. Speak a little louder, so that we all can hear. What is your business? A. Laborer.

Mr. STANLEY.—What is that?

The COURT.—Laborer, he says.

Mr. DOUTHITT.—Have you ever worked for the Inter-Island Steam Navigation Company?

A. Yes.

Mr. DOUTHITT.—It is admitted by counsel and may appear of record that the Inter-Island Steam Navigation Company, the defendant in this case, is a corporation, organized and existing under and by virtue of the laws of the Territory of Hawaii, and was such on the 8th day of July, 1912, the date of the

(Testimony of James Merseberg.)

accident to the plaintiff in this case, and as such corporation owned, maintained and operated a coal conveyor in Honolulu opposite the Honolulu Iron Works.

Mr. STANLEY.—That is admitted.

The COURT.—Very well, let the admission be shown.

Mr. DOUTHITT.—When did you work for the Inter-Island Steam Navigation Company?

A. I worked there before George had the trouble.

Q. How long had you worked for the Inter-Island Company before George Ward, the plaintiff in this case, got hurt? A. About two years.

Q. Two years? A. Yes, sir.

Q. And what was your work?

A. Worked on the coal-conveyor. **[83—16]**

Q. Working on the coal-conveyor? A. Yes, sir.

Q. Belonging to the Inter-Island Company?

A. Yes, sir.

Q. What part of the coal-conveyor were you working on?

Mr. STANLEY.—What time?

Mr. DOUTHITT.—During these three years before George got hurt, two years before George Ward got hurt?

A. I worked underneath the tower, the mauka tower.

Q. What is that?

A. I worked over here under this tower.

The COURT.—Speak a little louder.

A. I worked under this tower here.

(Testimony of James Merseberg.)

Mr. DOUTHITT.—Did your work ever call you out towards the makai end? A. Hey?

Q. Did you ever have to go to work at the makai end of the coal-conveyor?

A. Yes, sir; to kokua they get this trouble and get me to go there.

Q. Now, were you empolyed by the Inter-Island Company all the time, or only once in awhile?

A. Worked there when a coal boat come in.

Q. Worked there when a coal boat came in?

A. Yes, sir.

Q. Did you see the condition of the cable?

The COURT.—Would you rather speak English or Hawaiian? A. Rather Hawaiian.

Q. What?

A. Yes, talk Hawaiian, I understand talk Hawaiian better.

Q. You would rather speak Hawaiian, would you?

A. Yes, sir.

The COURT.—Mr. Beckley, will you kindly act as interpreter?

Mr. DOUTHITT.—Did you ever have occasion to observe the condition of the cable belonging to the Inter-Island Steam Navigation Company prior to the accident to the plaintiff in this case? [84—17]

A. Yes, sir.

Q. How long before the 8th day of July, 1912, did you observe—when did you observe the condition of that cable? A. Three days prior.

Q. With the exception of three days, did you see it

before those three days?

Objected to as leading. Objection sustained.

Q. What was the first time that you observed the condition of the cable prior to the time that George was hurt, the condition of the cable?

A. Well, the reason why I noticed the condition of the cable was when the cable slipped off the pulleys before George met with the accident and had to be replaced.

Q. Was that the first time prior to George's accident that you observed the condition of the cable; that is, was that the first time that you observed that was the condition of the cable?

A. Well, no; the first time I started to go up there when the ship came in, I noticed the bad condition of the cable.

Q. How long before George was hurt did you start to work on that ship?

A. I had started to work Monday on the week previous, and it was the following week when George met the accident.

Q. What was the condition of the cable when you first saw it—when you saw it, when you first went to work on that coal ship a week prior to the accident, as you have testified?

A. The wire strands of the cable had parted in places and become spurred.

Q. How far, if you observed, were the burs or strands sticking out of the cable when you first observed it, when you first saw it, when you went to work there?

(Testimony of James Merseberg.)

A. Nearly the whole length of the cable.

Q. Well, how far were the strands—you say it was throughout [85—18] the length of the cable; how far were the strands sticking out, or burs sticking out, from the main part of the cable, as you observed it, when you first went there to work about a week prior to the accident to the plaintiff in this case?

Mr. STANLEY.—I object to that; there is no evidence that there are any strands sticking out.

Objection sustained.

Mr. DOUTHITT.—Describe a little more in detail what you mean by burred?

A. The strands of the cable were broken in places so that the ends stuck out.

Q. Do you mean the wires or the strands?

Objected to as leading. Objection sustained.

Q. What do you mean by strands?

A. Well, the individual wires that made up the strands of the cable.

Q. To what extent were these individual wires that made up the strands projecting?

A. Some of them stuck out as much almost as an inch.

Q. And what did the others stick out?

A. One-sixteenth, two sixteenths, three-sixteenths and an inch.

Q. I will ask you whether that was the condition of the cable—whether that condition obtained throughout the entire length of the cable?

Objected to as leading. Objection sustained.

Q. At what intervals of the cable was it that the

(Testimony of James Merseberg.)

wires stuck out all the way from one-sixteenth to an inch, as you have described?

Objected to as leading. Objection sustained.

Q. How much of the cable was in that condition?

A. Well, I noticed that the whole cable as it passed around was about in the same burred condition; that is, the cable was worn out and the wires or strands were burred.

Q. Now, you went to work there. You first went to work on [86—19] the week prior to George Ward's accident, how many days did it take to get out the first coal boat?

Objected to as incompetent, irrelevant and immaterial, and having no bearing upon any of the issues of the case.

The COURT.—What occasioned its use is of no concern.

Mr. DOUTHITT.—I will reframe the question.

Q. I will ask you whether or not the cable was in use from the time that you went to work there on the last occasion when you went to work there up to the time that George Ward was hurt?

Objected to as leading.

Mr. DOUTHITT.—From the time that you went there to work there on the occasion—from the time that you went to work and immediately—a week prior to the time that George Ward was hurt, how much of the time was the cable in use?

A. We started to work Monday, and we worked up to Saturday, and the cable was used every day.

(Testimony of James Merseberg.)

Q. And how many hours a day was it used, in use?

A. Started to work at seven o'clock in the morning and quit at five.

Q. Do you remember what day that Mr. Ward was hurt?

A. I don't remember the day of the week, but it was the 8th of July.

Q. Now, by the cable being worked from Monday that you said you started in to work up to the Saturday, what do you mean that the cable was doing, what work was it subjected to, if any?

A. Pulling coal-cars.

(Here the Court, after the usual admonition to the jury, adjourned until to-morrow morning, May 26th, at 8:30 o'clock.) [87—20]

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

January Term, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY,

Defendant.

May 26th, 1914.

Direct Examination of JAMES MERSEBERG, resumed.

Mr. DOUTHITT.—By July 8th, what year do you mean, last year of year before last, do you remember?

(Testimony of James Merseberg.)

A. 1912.

Q. Did anything happen with regard to the cable prior to the time that Mr. Ward was hurt?

A. The cable was spoilt.

Q. I will call your attention to the Saturday immediately prior to the Monday when Mr. Ward was hurt, and I will ask you if anything happened regarding the cable on that day?

A. Saturday prior to the accident the cable came off and we replaced it on the pulleys, and then we noticed as the cable was started to work we noticed it running up and down on the side of the pulleys.

Q. Do you remember what time of day that was when the cable came off on the Saturday immediately prior to Mr. Ward's injuries?

A. I don't remember, it may have been in the afternoon. [88—21]

Q. It may have been you don't remember the time it was? A. No.

Q. Now, how far was the cable on that occasion, that is, on the Saturday?

A. It came off the makai end.

Q. Will you please illustrate on this model the condition of the cable when you first saw it on the Saturday immediately prior to the time that Mr. Ward was hurt, that is, on the Saturday?

A. Somewhere like that. (Illustrating.) About in this position. (Illustrating.)

Mr. DOUTHITT.—The first pulley on the Ewa side of the coal-conveyor in a semi-circle, it came off between the first and second pulley on the Ewa side

(Testimony of James Merseberg.)

of the coal-conveyor between the—between the first and second of the body of sixty pulleys.

Mr. STANLEY.—And extending almost to the extreme or makai point of the center of the curve.

Mr. DOUTHITT.—Yes, that is right.

Q. Where were you when the cable came off the pulleys on that occasion on the Saturday?

A. I was under the mauka tower working.

Q. And what did you do?

A. Akina, the foreman, called out to us to go down and lift the drum below, the weight.

Q. Before lifting the weight, did you go anywhere on the coal-conveyor?

A. I started to go makai towards where the place of the cable was that went off, and before I got half way, I was somewhere between the two towers and Akina called us to go down below.

Q. From your position between the two towers, I will ask you whether or not you could see the cable at the makai end? A. I could not see.

Q. How was the engine stopped on that occasion?

A. Jimmie Akina called out to stop the machinery.

[89—22]

Q. How was the engine stopped with regard to whether it was slow or fast?

A. Stopped immediately.

Q. What was the next thing that you did?

A. I went down below to lift the weight up.

Q. And was the weight raised? A. Yes.

Q. After raising the weight, what was done?

(Testimony of James Merseberg.)

A. We came back on the conveyor and replaced the cable on the pulleys.

Q. When you got to the conveyor, what was the condition of the cable with regard to slack to put it back? A. There was slack.

Q. After replacing the cable, what did you do?

A. Went down below again to lower the weight.

Q. Before lowering the weight, did you observe what slack there was which you had derived by raising the weight? A. There was slack in the box.

Q. What became of the slack at the weight—when you raised the box, did you get any slack?

Objected to as being already asked and answered.

Objection sustained.

Mr. DOUTHITT.—Where was the slack, Akina or Merseberg, where was the slack after replacing the cable around these pulleys when you got back to the weight for the purpose of lowering the weight—before you lowered the weight, did you observe the condition of the slack at the weight?

A. Well, when we lifted the weight there was a slack at the box of the weight there, and when we came down to lower that weight the slack was still there.

Q. The slack was still at the weight. Do you know where the slack came from which enabled you to put back that cable around the pulleys in the Saturday immediately prior to the accident?

Objected to as indefinite and unintelligible, and already [90—23] asked and answered.

Objection overruled. Exception.

(Testimony of James Merseberg.)

A. Well, the machine was suddenly stopped, the cars were on the tracks, still moving, gave the necessary slack.

Q. When the engine is stopped, Mr. Merseberg, I will ask you whether the cars that are on the track stop instantly?

Mr. STANLEY.—Do you mean on this occasion?

Mr. DOUTHITT.—No, no, as a general rule, he knows the conditions down there.

A. When the machinery is stopped, the cars move on until it stops.

Mr. DOUTHITT.—Momentum. After you lowered the box on the Saturday immediately before the accident, I will ask you whether or not you had occasion to observe the cable at the makai end as it was running around the pulleys.

A. The only time I came makai there was when the cable was off, and we came there to replace it, and afterwards it started running.

Q. After it started running, what was the cable doing; did you see after it run around the makai end, did you observe?

A. Well, the cable ran up and down the side of the pulleys.

Q. Do you know, Mr. Merseberg, what caused the cable to run up and down the pulleys at that time?

Objected to, that the witness has not qualified to testify on the subject.

Objection sustained. Exception.

Mr. DOUTHITT.—Now, Mr. Merseberg, have you seen new cables running around, or good cables

running around the makai end of the coal-conveyor during the time that you were employed there?

A. Well, yes, I have seen a good cable in operation down there in that conveyor, but I never saw a good cable running up and down on the sides of the pulleys as I saw the cable doing [91—24] on that day in that manner.

Q. Did you have an opportunity, Mr. Merseberg, after the cable had been started, of observing the condition of the cable on the Saturday immediately prior to the time that Mr. Ward was hurt?

Objected to *ask* already asked and answered.

Objection sustained. Exception.

Mr. DOUTHITT.—At the time the cable came off the pulleys on the Saturday prior to the Monday Mr. Ward was hurt, was coal being loaded from the vessels, or unloaded, or what was being done?

A. There was a coal vessel alongside the conveyor there, and the coal from the vessel was being put on to cars.

Q. Now, on which side of this coal-conveyor with respect to which track were these cars being loaded with coal? A. On the Waikiki track.

Q. And would return on which track when emptied of coal? A. On the left track.

The COURT.—The Ewa track?

A. The Ewa track.

Mr. DOUTHITT.—Do you remember how you restored the cable to its position around the pulleys on the Saturday immediately prior to Mr. Ward's accident?

(Testimony of James Merseberg.)

A. Lifted the cable in our hands and replaced it.

Q. You remember the occasion of Mr. Ward's accident, do you? A. Yes.

Q. What time of day did that occur?

A. It was in the forenoon, between nine and ten o'clock.

Q. And on what particular portion of the coal-conveyor were you working at that time?

A. I was under the mauka tower.

Q. Where was Mr. Ward before the accident happened? A. He was on the vessel.

Q. Now, what was the first thing that happened with respect to the accident that morning?

A. Well, the cable came off. [92—25]

Q. Where? A. Makai.

Mr. DOUTHITT.—Coming off on the makai four pulleys of the group of eight on the Ewa side.

Q. What was the first thing that you did when you learned that the cable was off?

A. Well, George came up and ordered us to go and get bars and go and replace the cable.

Q. Where was Mr. Akina at that time, if you know?

A. I didn't see him there that time; he may have been in the coal-yard.

Mr. STANLEY.—I move that the answer be stricken out.

Mr. DOUTHITT.—I consent that it may go out.

The COURT.—Very well, it may go out.

Mr. DOUTHITT.—Where was he with reference to this makai end of the coal-conveyor at the date of

(Testimony of James Merseberg.)

George Ward's accident, where was he at the time the cable came off, where was Akina when the cable came off, where was Akina, if you know?

Mr. STANLEY.—Was he there?

Mr. DOUTHITT.—Was he there? A. No.

Q. Did you get the bars? A. Yes.

Q. And what did you do after the bars were procured?

A. We came over and pried the cable back into position.

Q. I will ask you at the time that you came back and pried the cable back into position whether there was any slack at that makai end in the cable?

A. Yes, there was.

Q. How much?

A. Well, I cannot say exactly how much slack there was. From my own experience, having to replace that same cable before that time, in my judgment there was sufficient slack to enable us to replace the cable.

Q. And by saying according to your experience in replacing the cable before, I will ask you whether or not it was the replacing of the cable at the makai end or other portions of the coal-conveyor? [93—26]

Objected to as leading.

Objection overruled. Exception.

A. In the coal-yard.

Q. What was the usual and customary manner of restoring the cable to its position around the pulleys when it got off in the coal-yard in the same manner as it was on the date of George Ward's accident?

(Testimony of James Merseberg.)

Objected to as incompetent, irrelevant and immaterial and having no bearing upon any of the issues of the case.

Objection sustained. Exception.

Mr. DOUTHITT.—How is the cable restored when the cable is off, for example, four pulleys?

Same objection.

Objection sustained. Exception.

Mr. DOUTHITT.—What did you do to replace the pulleys—to get back the cable?

Objected to as indefinite.

The COURT.—On this occasion.

Mr. DOUTHITT.—On the occasion of the accident.

A. I used a crowbar.

Q. And what happened while you were in the act of replacing the cable?

A. The next thing was that George fell over and down below and the cable got off eight pulleys.

Q. The cable got off these eight pulleys and George fell down below to what? A. On to the wharf.

Q. Did George fall down to the wharf before the cable got off the pulleys, or after the cable got off the pulleys?

Q. Well, he fell over at the same time that the cable sprung and got off the entire eight pulleys.

Q. Well, what made him fall, if you know?

A. The cable slipped from the bar, that is how it happened. [94—27]

Q. Will you just describe, get down here and ex-

(Testimony of James Merseberg.)

plain to the jury how George happened to be knocked down?

A. George had his bar in this position (illustrating) trying to lift the cable back into position.

Q. Where was the cable at the time he went over?

A. When George fell, the cable was off the eight pulleys.

Q. Well, now, at the time just immediately prior—

The COURT.—Off the eight pulleys on which side of the eight pulleys? A. On the Ewa side.

Mr. DOUTHITT.—Now, at the time, what progress had you made or had George made together with the others to get that cable off, and get it over to the pulleys at the time the accident happened? Just show how you had got the cable up.

A. The cable was in that position (illustrating), and George had his crowbar in the act of lifting the cable up when it slipped off the eight pulleys.

Q. How far did the cable have to go—did you have to pull the cable to restore it to its position around these four pulleys, and how many inches, if you know? A. Two or three inches.

Q. And then as I understand you, it slipped out of its position, the whole thing, and Ward fell down on the wharf? A. Yes, sir.

Q. Do you know what made George fall over?

Objected to as already asked and answered.

Objection sustained. Exception.

Q. What was the condition of the cable at that particular time, if you know, at the time that Ward

(Testimony of James Merseberg.)

was hurt? A. It was in a bad condition.

Q. What do you mean?

A. The individual wires of the strands were broken in places and sticking out.

Q. What did Mr. Ward fall on, what did he fall on? A. On to the wharf. [95—28]

Q. Below? A. Yes.

Q. Are you employed by the Inter-Island Steam Navigation Company at the present time?

Objected to as incompetent, irrelevant and immaterial and having no bearing upon any issues of the case.

Objection sustained.

Mr. DOUTHITT.—When did you sever your connection with the Inter-Island Steam Navigation Company?

Same objection. Objection sustained. Exception.

Q. What are you doing at the present time?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled.

The COURT.—The ruling is vacated and set aside and the objection sustained. Exception.

Mr. DOUTHITT.—How long did you continue to work for the Inter-Island Steam Navigation Company after George Ward was hurt?

Objected to as incompetent, irrelevant and immaterial and having no bearing upon any of the issues of the case.

Objection sustained. Exception.

(Testimony of James Merseberg.)

Cross-examination of JAMES MERSEBERG.

Mr. STANLEY.—You worked, Mr. Merseberg, you say, under the mauka of the two towers on the coal-conveyor, referring particularly now to the Saturday before Ward was hurt, is that right?

A. Yes.

Q. And what was your duty there?

A. Filling the car with coal.

Q. Filling the cars with coal. And what is the operation, how is that filling of the car performed? Describe the operation [96—29] of filling the car and your duties in connection with it.

A. Well, there is a hopper under that tower there with a door and there are two ropes. We pull one rope and the coal runs into the car and we pull the other rope and shut off the opening of the hopper.

Q. This hopper is like a chute, is it not?

A. Yes.

Q. There being a gate at the lower end of the chute and just above the car you are filling?

A. Yes.

Q. And your work was to see that the car was filled and see that when it was filled that the gate of the hopper, the chute, was closed? A. Yes.

Q. And that was all your business there, was it not?

A. When there were cars around and empty it was my duty to have them filled. When there were no cars in sight I did other work.

Q. What other work were you attending to on this Saturday?

(Testimony of James Merseberg.)

Q. I don't remember exactly what kind of work I attended to aside from filling up the cars on that date, that is all I remember distinctly at this date is the fact of our being called to go and replace the cable.

Q. You were one of the extra hands employed by the Inter-Island whenever a coal ship was in port and discharging coal, that is so, is it not?

A. Yes.

Q. And your main duty was just to stand there under the mauka tower and watch the filling of the cars?

A. We were not there at all times. Sometimes I would be placed there and sometimes I would be placed in the coal-yard.

Q. On that Saturday your duty was under the mauka tower? A. Yes.

Q. You had nothing to do with the running of the cable? A. No, another boy attended to that.

Q. Now, when was it that you first observed the condition of **[97—30]** the cable?

A. The Monday that I went there to work.

Q. What day was that?

Objected to as indefinite.

Q. What day of the month was it?

A. I think it was the first of the month.

Q. The first of July, is that right? A. Yes.

Q. Now, will you state a little more particularly what you actually noted was wrong with the cable?

A. Well, I noticed the burred condition of the cable throughout its entire length because Akina

(Testimony of James Merseberg.)

ordered me to grease up the pulleys and I had to do that around the makai end as well as the pulleys around the whole conveyor, to the coal-yard, oil the pulleys there, oil them and oil the track as well.

Q. And at what interval on this cable would these wires be projecting?

A. Well, I didn't pay any particular attention as to the whole length as to whether there was any good part of the cable left, my recollection is and my impression at the time was that this burred condition of the wire or cable was throughout its entire length.

Q. So that I understand these wires were projecting as far as you could see throughout the entire length of the cable, is that right?

A. Yes, I think so.

Q. And how far out from the main body of the cable did the wires project?

A. Well, from one-sixteenth of an inch, some two-sixteenths of an inch, some three-sixteenths of an inch, some almost an inch.

some almost an inch.

Q. And were these projections perpendicular to the main body of the cable or how were they?

A. Well, they were not all in the same position, some were sticking out and some were just slanting, following the run of the cable.

Q. Well, in what position were the majority of the wires that were sticking out, horizontal or perpendicular to the line **[98—31]** of the cable?

A. Well, I cannot say as to whether the majority

(Testimony of James Merseberg.)

of the wires were sticking perpendicular or not, all I remember is that the wires stuck out from the cable differently.

Q. But you do remember distinctly, do you, that a number of them anyhow were sticking out on a line perpendicular to the main body of the cable?

A. Yes.

Q. Now, what would be the average length of the projection of the wires to the length of the cable?

A. I cannot answer that because I did not stop to count the number of strands sticking out to tell which was the larger proportion, whether the wires sticking out perpendicular to the cable were more than the short ones.

Q. My question is this, you observed the general condition of the cable; I want to know if it looked to you as if the projections averaged nearly an inch or averaged nearly one-sixteenth of an inch, whether they were only occasionally an inch out or half an inch out and throughout the main body generally it was one-sixteenth?

A. Well, the short length wire and the longer wire were about equal, that is the long ones and short ones in about the same position all along the cable.

Q. You testified, did you not, Mr. Merseberg, in the last trial of this case? A. Yes.

Q. That was about June of last year?

A. Yes, sir.

Q. Is it not a fact that at that trial you said nothing about the wires sticking out an inch or three-sixteenths of an inch or two-sixteenths of an inch,

but said under examination by Mr. Douthitt that the projections were about one-sixteenth of an inch and that is all?

A. Well, I remember testifying some of the wires were sticking out one-sixteenth of an inch because I was asked as to that length but I don't remember of being asked whether they were longer or projecting out more than one-sixteenth, you know. **[99—32]**

Q. Is it not a fact that you were asked how far these wires were projecting and you said one-sixteenth of an inch, answering in English at the time and made no reference whatsoever to the other projection?

A. Well, at the time I remember your asking me about that, I thought he was referring to the wires of one-sixteenth, and I answered that. At the time I told you repeatedly several times in the trial that I did not understand English properly but you said for me to speak in English.

Q. Is it not a fact, Mr. Merseberg, that Judge Cooper allowed you the services of Mr. Beckley as interpreter and that when you were speaking through Mr. Beckley, the questions put to you through Mr. Beckley as to how long these wires were sticking out that you said in English immediately, one-sixteenth of an inch?

A. Well, I was asked that question and I answered, one-sixteenth of an inch. I was not questioned further on that matter.

Q. Now, you say you observed the condition of this cable when you went down to work there on

(Testimony of James Merseberg.)

July 1st; as I understand you the next time you had occasion to observe it particularly was on the Saturday before Mr. Ward was hurt, is that right?

A. Yes.

Q. And on the occasion of this Saturday you say you were working under the mauka tower when you heard that the cable had come off the makai end of the track, is that right?

A. Yes, sir, as it got off I started to run makai when someone called me to run back.

Q. Then you say you got an order from Akina to run down below and raise the weight, is that right?

A. Yes.

Q. And you did raise the weight, did you not, using the block and tackle which *it* kept near the weight for the purpose of raising and lowering it?

A. Yes.

Q. Who was with you while you were raising that weight?

A. David Kalau, Kaima, Nunu, David Hoolau, myself, Akina, **[100—33]** these are all the men that I remember at the present time.

Q. Well, did you all go down to work on this block and tackle? A. Yes.

Q. And then you came up? You got the weight up and came back and you and these other men I take it came to the makai end of the conveyor and put the cable back in position by hand? A. Yes.

Q. And what did you do after that when you got the cable back?

A. After the cable started to run I remained there

(Testimony of James Merseberg.)
with Akina after it started running.

Q. What was done with the weight after you got the cable restored to the pulleys?

A. Well, after we replaced the cable we went down below again and lowered the weight.

Q. That is, as I understand you, as soon as you got the cable back on the pulleys you were sent down below to lower the weight? A. Yes.

Q. Now, you have testified that you don't know what part of Saturday this occurred, it may have been in the afternoon, but you don't know. I will ask you how long did it take from the time that you found that the cable was off until you had it restored again, until you had it restored back on the pulleys?

Mr. DOUTHITT.—Do you mean for the entire operation after raising the weight and lowering the weight?

Mr. STANLEY.—Yes.

Q. How long did it take from the time that you observed the—from the time that you got the order to raise the weight until you had lowered the weight again? A. Twenty or thirty minutes.

Q. And by that time the cable was in operation again? A. Yes.

Q. Now, when was it—you say having put the cable back into position you were ordered to go down and lower the weight again [101—34] and did so; when was it that you observed the raising tendency of this cable on the pulleys?

A. I came down makai here and saw the cable as it started to run there and noticed how it was run-

(Testimony of James Merseberg.)

ning up and down the sides of the pulleys.

Q. After it had started again, after you had lowered the weight, is that right? A. Yes.

Q. What was your business down there?

A. Well, it was a part of our duties, it is customary whenever the cable slips off the pulleys there when it is replaced and started again it is our duty to go around and see that it is working well.

Q. Who was down there at the time?

A. Akina.

Q. Akina was there, and Akina was foreman?

A. Yes.

Q. He did not order you to go down to the makai end after the thing started, did he?

A. He did not order me on that particular occasion, but that is a part of your duties.

Q. Who else besides Akina was there?

A. Akina is the only one I remember now.

Q. Where was Mr. Ward at that time?

A. I think he was there but I am not quite sure.

Q. And how long did you remain there watching this raising motion?

A. Oh, about two or three minutes, then I went back to my work.

Q. Now, whereabouts on the conveyor was it that you were watching this raising motion?

A. I was standing in about this position (illustrating).

Mr. STANLEY.—He was standing on the planks on the makai end of the conveyor watching the

(Testimony of James Merseberg.)
action of the cable on some of the set of eight pulleys on the Ewa side. That is right, is it?

A. Well, watching the cable as it went around all the pulleys on the makai end of the conveyor.

Q. Well, where was it that you noticed the raising motion?

A. Well, on all these pulleys. **[102—35]**

Q. And that continued, did it, all the time you were there?

A. Yes, it was continuing in that way when I left and went back to my work.

Q. And how close up to the top of the pulleys did the cable come in this raising motion?

A. Well, the middle part of the pulley is narrower than the top and the cable would run to the middle of the pulleys and raise a little above the middle of the pllley and then down again.

Q. Does the cable generally run about the middle of the pulleys?

A. Well, the cable in good condition will run about the middle of the pulley without raising up or down.

Q. Is it not a fact that the cable runs in a groove at the foot of the pulley just above the flange?

A. Well, there is a groove that is worn around the pulleys about nearly the middle and the cable usually runs in that groove, but when the cable is worn out it gets out of that groove.

Q. I see. Now, how far above in inches or feet or half inches, anything you like, how far above this

(Testimony of James Merseberg.)

groove did the cable rise on this occasion when you were watching it?

A. I could not say how many inches it rose above the usual groove where the cable usually runs when it was in working order but I noticed the cable was out of the groove and above it at times when it was in action.

Q. Well, during this two or three minutes can you give the jury any idea how far that cable was above the groove?

A. Well, the cable was running and in constant motion so I could not tell you how many inches it rose above the usual groove.

Q. Now, is it not a fact, Mr. Merseberg, that at the last trial of this case that you never testified to anything of the kind as having observed that rising motion of the cable on the pulleys?

A. I was not asked as to that.

Q. And you did not testify as to anything of that kind, did you? A. No. **[103—36]**

Q. And just prior to the cable coming off the Saturday the coal-conveyor was in operation?

A. Yes.

Q. And you were engaged in the operation of unloading a ship? A. Yes.

Q. Now, on the morning of July 8th where were you working? A. Under the mauka tower.

Q. Under the mauka tower, and what was the first you knew of the cable being off the pulleys on that morning?

A. Well, someone called out to George and at the

same time the boy in charge of the key to the engine was called to stop the engine.

Q. Who called out to George—by George you mean Ward? A. Yes, one of the boys.

Q. Who was it? A. David Kalau.

Q. And where was Ward at the time that the boy called out to him? A. He was on the ship.

Q. How do you know that?

A. Well, most of the time he was on the ship.

Q. I am asking you at the time that he was called on the morning of July 8th that he was in the vessel or on the vessel?

A. Well, he came off of the ship.

Q. Did you see him coming off of the ship, after Kalau called him?

A. Well, I didn't see him personally but I was told by those who were working with me that George Ward was on the ship and he was coming up from the ship.

Q. And that is all that you know about George Ward, was at the time of this calling out to you?

A. Well, that he was called, then I was told that he was on the ship and coming from the ship. I started makai on the conveyor and turned around and saw George coming up by the scale-house.

Q. That is the first that you saw of him on that occasion? A. Yes.

Q. And what did you do then?

A. He told me to go **[104—37]** after a crow-bar.

Q. What?

(Testimony of James Merseberg.)

A. He told me to go after a crowbar.

Q. And you did so? A. Yes.

Q. And came back makai with George, with Ward? A. Yes.

Q. Who was present there at the time of the accident? A. Yes.

Q. Just prior to the cable coming off, the coal-conveyor was in operation, the machinery was in operation?

A. Well, when the cable got off one called out and the machinery was stopped.

Q. Before the cable came off the machinery was in operation and the work of unloading going on?

A. Yes.

Q. After you heard George called for and seen him at the scale-house then you heard the order, did you, to stop the engine?

A. The machine was stopped at the time that George was called for before I saw George at the scale-house.

Q. Before you saw George at all the engine was stopped? A. Yes, sir.

Q. And you came down to this makai end and then you say you saw George attempting to put the cable back on the pulleys?

A. Well, George ordered us to get the crowbar and we all came there and helped put the cable back.

Q. And when you got down there you said you found the cable off in the position you have described; that is off the makai four, off on the Ewa

(Testimony of James Merseberg.)
side of the makai four of the first block of eight pulleys? A. Yes, sir.

Q. That is on the four mauka ones of the four makai? A. Yes.

Q. And then you say that George came down towards the makai set of eight and tried to pry the cable back into position? A. Yes.

Q. Now, it is not a fact, Mr. Merseberg, that at the last trial you testified that the cable was off the four mauka pulleys of the set of eight and on the makai four as I put it there (illustrating).

A. Well, it is so long I may have stated that way but it may be true that off the mauka four instead of the makai four. **[105—38]**

Q. You mean it is so long since it happened that you forgot how it was? A. Yes.

Q. And you forget whether Ward was prying towards the mauka end of the set of eight pulleys to put the cable back or whether he was at the makai end?

A. Well, if it was mauka pulleys where the cable slipped then he must have been mauka.

Q. And if it was the makai set that was off then he would be trying to put it back, he would be stationed down makai, but you don't remember now where it was?

A. I think the cable got off the four mauka pulleys.

Q. And when you testified in answer to Mr. Douthitt this morning and explained to the jury that it was off the four makai pulleys you were mistaken?

(Testimony of James Merseberg.)

A. Yes.

Q. And the mistake is due to the fact that it happened so long ago that you had forgotten?

A. Yes, sir.

Q. But which ever set—which ever of this set of eight pulleys it was off as a matter of fact when George fell, simultaneously with George falling the cable sprang out afterwards, did it not?

A. Yes, sir.

Q. Now, going back to Saturday for one moment. I think that is about all. Will you explain what you mean by saying that after you had put back the cable on the pulleys on Saturday you came down to the weight and lowered it again and found this slack here, what do you mean by that?

A. Well, that is what I noticed when we lifted the weight up it was a slack caused by lifting it up and when we came to lower it down the slack was still there.

Q. Still there? A. In the box.

Q. The slack was in the box? A. Yes.

Q. What do you mean, coiled up in the box or not? A. The slack was around the box.

Q. What are you referring to as the slack—the slack was **[106—39]** right down in the body of the box? A. Yes.

Q. And was not distributed at all over the conveyor?

A. There was no slack along the conveyor, the slack I noticed was in the box.

Q. And no slack at all on the conveyor?

(Testimony of James Merseberg.)

A. Well, when we lifted the weight up there was the slack there at the time and then when we came up and replaced the cable around the pulleys, we replaced the cable and I noticed there was also the slack down here.

Q. Now, is it not a fact, Mr. Merseberg, that when you lifted that weight up that immediately the cable right along the track slacked down to the floor of the platform?

A. I did not notice any slack there I ran makai to where the cable was off the pulleys.

Q. You mean to say that you did not notice whether there was a slack or not?

A. I don't think there was any slack mauka.

Q. Mauka of what?

A. Along the track, I did not pay any particular attention.

Q. You say you don't think there was any slack mauka, do you mean mauka of the scale-house or what?

A. Between the scale-house and the makai end.

Q. Between the scale-house and the makai end, but you say you did not notice it one way or the other, is that right?

A. There might have been a slack but I did not notice, I went makai.

Mr. STANLEY.—That is all. **[107—40]**

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

January, 1914, Term.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY,

Defendant.

Tuesday, May 26th, 1914.

[Testimony of James Akina, for Plaintiff.]

Direct examination of JAMES AKINA, called for the plaintiff, sworn.

The CLERK.—Your name, please?

Mr. DOUTHITT.—What is your business?

Mr. STANLEY.—I think this witness speaks English, your Honor.

The COURT.—Do you desire to speak Hawaiian or English?

A. Well, I speak a little bit, but not much. I can talk in my language better.

Mr. DOUTHITT.—What is your business?

A. I am a boiler-maker.

Q. Where? A. At Kahuku on this island.

Q. And what company are you employed by?

Objected to as incompetent, irrelevant and immaterial and **[108—41]** having no bearing on the issues of this case.

Objection overruled.

A. The wireless company.

(Testimony of James Akina.)

Mr. DOUTHITT.—Have you ever been employed by the Inter-Island Steam Navigation Company?

A. Yes.

Q. And how long were you employed by the Inter-Island Steam Navigation Company?

Objected to as incompetent, irrelevant and immaterial.

Q. Prior to the accident to George Ward, how long were you employed by the Inter-Island Steam Navigation Company? A. Nearly two years.

Q. Nearly two years? A. Fire years.

Q. Do you mean five years before George Ward was hurt?

Mr. STANLEY.—How long were you working for the Inter-Island Company before Ward was hurt?

Mr. DOUTHITT.—Before George Ward was hurt how long had you been employed by the Inter-Island Steam Navigation Company?

A. Five years.

Q. Now, what were you doing, what was your work with the Inter-Island Steam Navigation Company during the five years?

A. For two years I worked with George and three years I worked on the conveyor.

Q. And doing what under George?

A. Putting up the coal-conveyor.

Q. And what else did you do besides putting up the coal-conveyor during those two years?

A. And hauling coal.

Q. What position did you occupy during the last three years that you were employed there by the

(Testimony of James Akina.)

Inter-Island Steam Navigation Company before George was hurt? A. I was a luna.

Q. And as a luna where did your duties call you in respect [109—42] to the coal-conveyor?

A. Well, when coal ships came in we were to take off the coal and when Inter-Island boats came alongside the dock there we were to fill them up with coal.

Q. Well, you were employed as I understand you, continuously; you were not a periodical employee, but you were employed continuously during those five years by the Inter-Island Steam Navigation Company? A. Worked continuously.

Q. And how many men did you have under you as luna? A. Eight men, besides myself.

Q. And where were those men employed around the coal-conveyor?

A. Some of the men would be around the towers, some would be on the scale-house.

Q. Yes. A. Some would be in the coal-yard.

Q. Did you ever have occasion to observe the condition of the cable prior to the time when George Ward was hurt?

Mr. STANLEY.—Do you mean the cable that was in operation at the time?

Mr. DOUTHITT.—Yes.

A. Yes, sir.

Q. Now, how long before George Ward was hurt was it that you first observed the condition of the particular cable which afterwards slipped off?

A. More than a month previous.

Q. Now, what was the condition of that cable—

(Testimony of James Akina.)

what was the condition of the cable at that time, that is, more than a month previous to the time that Ward was hurt?

A. It was in poor condition, and the wires had become burred. The wires stuck out.

Q. What did you do, what was the occasion upon which you observed—what was it, how did you come to observe the condition of the cable at that time? Just tell how you observed it, how you came to observe it? **[110—43]**

A. Well, it is on account of the machinery not working properly—the cable, on account of the wires and strands wearing off and sticking out in coiling around, the machinery didn't work smoothly, so I informed Mr. Gedge of that fact.

Q. By Mr. Gedge, do you mean the secretary and treasurer of the Inter-Island Steam Navigation Company, the defendant in this case? A. Yes.

Q. Where was Mr. Gedge when you informed him?

A. Down in the office.

Q. Well, what did you say to Mr. Gedge?

A. I told him about the cable and the condition of the cable.

Q. Where was he when you told him that?

A. Down in the engine-room of the coal-conveyor.

Q. Now, repeat what you said to Mr. Gedge at that time. A. His very words?

Q. Give it just exactly, as we are going along here, the interpretation.

A. I told him about the cable. I told him that the

(Testimony of James Akina.)

cable was bad, poor.

Q. And what did Mr. Gedge say to that, if anything?

A. He said he was going down to get Mr. Ward.

Q. Then, what happened after that?

Q. Then Mr. Gedge and Mr. Ward come over again and I heard them talking.

Q. What were they saying?

A. Well, I heard Mr. Ward tell Mr. Gedge to have the cable taken out and the drum taken out.

Q. Taken out, what do you mean by that?

A. Have it taken out and replaced by a new cable.

Q. And what did Mr. Gedge say to that, if anything?

A. He said—what I heard him say was that the cable was all right as it was, but the drum could be taken out.

Q. In pursuance of that conversation—to whom did he [111—44] tell that, to whom did Mr. Gedge tell that? You say you understood him to say that the cable was all right, but the drum could be taken out; whom did Mr. Gedge tell that to?

A. To Mr. Ward.

Q. And what was done by Mr. Ward, if anything, after that conversation?

A. Well, we took out the old drum and put a new one in.

Q. Who assisted Mr. Ward in putting in the drum? A. I did.

Q. I will ask you whether or not at that particular time, whether the cable—the coal-conveyor was in

(Testimony of James Akina.)
operation loading or unloading coal? A. Yes.

Q. At that time, when the new drum was put in; do you understand what I mean? Do you understand, Mr. Interpreter, at the time—I am calling his attention to the time when the new drum was put in, whether or not the cable was in operation at that particular time loading and unloading coal, a month prior to the accident, when he heard this conversation? A. Yes, it was in operation.

Q. Do you remember whether foreign ships were being discharged or whether the vessels belonging to the Inter-Island Steam Navigation Company?

A. We were loading the Inter-Island boats with coal.

Q. And between that—between that time when you replaced the—when you put in the new drum and the time when Mr. Ward was hurt, when did the first foreign coal ship come in?

A. Three weeks after that.

Q. Three weeks after the new drum was put in, which was about a month prior to the accident, as I understand it? A. Yes.

Q. Now, during these three weeks, from the time the drum was put in up to the time that the first coal ship came in, I [112—45] will ask you whether the cable was in operation every day or only once in awhile?

A. Well, when the Inter-Island boats would come there to load coal the cable would be only used for a half an hour or hour, that is all, but when foreign

(Testimony of James Akina.)

ships would bring coal, then the conveyor would be used every day.

Q. Do you know about how long it took to unload the first foreign ship after the or just before—the first foreign ship that came in before George Ward was hurt? A. Five days and a half.

Q. And how long—how many hours a day was the cable running during those first five days and a half?

A. Well, it is being used,—the work would start at seven o'clock and work stopped at five o'clock.

Q. Any time for dinner at the noon hour?

A. One hour rest.

Q. How long did it take to discharge the second coal boat? A. About six days.

Q. The number two boat. Put that question again, please. A. About six days.

Q. Now, do you remember the accident, the day of the accident to Mr. Ward? A. Yes.

Q. Do you remember what day of the month, and the year it was?

A. I could not tell you the date, it is some time ago.

Q. Do you know the month and the year?

A. No, I have forgotten it.

Q. But you know the fact of his being hurt?

A. Yes.

Q. Which coal boat were you working on, that is, unloading, at the time that Mr. Ward was hurt, on the day that Mr. Ward was hurt?

A. Well, it was a steel vessel; I don't remember the name now.

Q. I know, but with respect to whether it was the

(Testimony of James Akina.)

first coal [113—46] boat that came in, or whether it was the second coal boat that came in?

A. The first boat.

Q. How did the condition—do you remember whether *the came* off the pulleys at any time between the time that the drum was replaced and the time of the accident to Mr. Ward at the makai end?

A. Yes.

Q. How many times did the cable come off the pulleys at the makai end from the time when the drum was replaced—the new drum was put in, up to the time when George Ward was hurt?

A. Two or three times.

Q. How long prior—when was the last time that it came off, the cable, immediately prior to the time that Ward was hurt? A. Saturday.

Q. What was the—how did the condition of the cable compare between the time when the new drum was put in and the condition of the cable on the Saturday immediately prior to Ward's accident?

A. Well, it was in worse condition than it was on the day when the new drum was put in.

Q. Do you remember the day of the week on which Mr. Ward was hurt? A. Monday.

Q. Now, you said the cable was in worse condition on the Saturday immediately prior to Ward's injury and the time when the drum,—that is the new drum, was put in; explain what you mean by in worse condition?

A. Well, more of the wires of the strands had broken, and were sticking out.

(Testimony of James Akina.)

Q. Do you know whether a cable which was in the condition that you have described it to be, would improve on account of the work to which it was subjected, or deteriorate, or did it improve as to its condition, or did it deteriorate, become worse [114—47] by being subjected to use?

Objected to as being already asked and answered.

Objection sustained.

Mr. DOUTHITT.—How far were the wires sticking out from the cable on the occasion,—we will say, on the Saturday immediately prior to the accident to George Ward?

A. In some places one-sixteenth of an inch, three-eighths of an inch, a quarter of an inch, a half an inch to an inch.

Q. What was the condition of the entire cable with regard to the wires sticking out to the extent which you have described?

A. It was the same all through the whole length of the cable.

Q. Do you know how long that cable was?

A. Well, I didn't make any memorandum of it when the cable was put in use, but if I am not mistaken it was used for sometime; it had been used for some months.

Q. I didn't ask you that, I asked you what was the length of that cable?

Mr. DOUTHITT.—I move to strike the answer as not responsive.

The COURT.—It is so ordered.

(Testimony of James Akina.)

Mr. DOUTHITT.—What was the length of the cable? A. Twenty-eight hundred feet.

Q. What kind of a cable was that?

A. Steel wire.

Q. How many wires in the cable if you know?

A. Do you mean the circumference or diameter?

Q. It was a steel-wire cable? A. Yes, sir.

Q. When you say that the cable had come off two or three times prior to the time when Mr. Ward was hurt, do you mean to include in that the Saturday immediately prior to the injury to Mr. Ward?

A. Yes, sir.

Q. That is at the makai end?

A. Yes. [115—48]

Q. Do you remember the occasion; do you remember whether or not the cable came off the pulleys at the makai end on the Saturday immediately prior to the accident? A. Yes.

Q. Do you remember the time of day that was?

A. Yes.

Q. What time was it about?

A. Well, it was in the forenoon somewhere between nine and ten o'clock.

Q. That is on the Saturday immediately before the accident? A. Yes, sir.

Q. Now, where were you when you first learned that the cable was off the pulleys at the makai end on the Saturday immediately before the accident?

A. I was in the scale-house.

Q. How did your attention first become directed to the fact that the cable was off the pulleys at the

(Testimony of James Akina.)

makai end on that occasion, that is on the Saturday?

A. I was in the scale-house when somebody called out to me.

Q. And what did you do—do you know who that was that called out to you? A. Yes.

Q. Who was it?

A. Nunu, he is one of the men working on the makai end or side of the conveyor.

Q. And what did you do, Mr. Akina, when you got that information? A. I came down there to see.

Q. And when you got down there what did you observe when you got at the makai end, what did you observe with regard to the cable?

A. Well, I saw that the cable had got off of the pulleys.

Q. How many pulleys had it got off on that Saturday, can you step down and show?

A. Off in about this position (illustrating).

Q. At the time that you first got there?

Mr. STANLEY.—The witness shows that it was entirely off the [116—49] block of eight and extending across the top of the makai pulleys to about a position of the center of the makai pulleys on the Ewa side.

Mr. DOUTHITT.—Was the cable running or moving or had it stopped when you got there,—when you first got there?

A. Still moving.

Q. Now, when you first saw the cable it was in the condition which you have described; what did that cable do as you stood there and watched it?

(Testimony of James Akina.)

A. Well, one of the boys standing in this position here (illustrating) at the edge of that plank and when I noticed the cable being off that way and with a jumping motion, I grabbed hold of the boy and shoved him back and at the same time made a motion to someone forward there to stop the engine.

Q. Did the cable—now, while you were standing there looking at that, did that cable come off any more of the pulleys than it was when you first observed it; did it subsequently come off any more of the pulleys?

A. Well, no, we started—I turned around and told the boys to go down below and lift the weight.

Q. It was off all of these pulleys, as I understand it, or around there. Be careful and do it just exactly as you saw it, take your time, don't be rushed about it, there is all the time in the world.

(Witness places cord on model representing cable.)

Mr. STANLEY.—Illustrating with the cable off the first eight pulleys on the Ewa side and extending along the top of the pulleys, extending almost to the center of the other side of the pulleys.

Mr. DOUTHITT.—Was it inside the pulleys that you have described on that occasion, Akina?

A. Just as I have placed [117—50] it.

Q. Then when you saw the condition of the cable being off all of those pulleys what did you do?

A. We went down below and lifted the weight up.

Q. When you came back after lifting the weight, what was the condition of the cable? After coming

(Testimony of James Akina.)

back, now, after you lifted the weight, did you see any change in the condition of the cable?

A. The wire was slack.

Q. Now, when you lifted the box or lifted the weight—when you lifted this, the weight which is represented on the coal-conveyor model, did you or did you not get any slack at the weight? A. Yes.

Q. Now, when you got back here after lifting the weight you say for that slack, what did you do?

A. Well, we picked the cable up and replaced it.

Q. Did you come back to the weight after replacing the cable? A. Yes.

Q. Where was the slack at the weight when you came back there after replacing that cable?

A. The slack was still there.

Q. Do you know where you got the slack at the makai end to put the cable back in its proper position on the pulleys if you didn't get it from the weight?

Objected to.

Q. Where did you get the slack from if you know to put back the cable to its position around the pulleys?

Objectsd to. Objection overruled. Exception. Exception allowed.

A. Well, my idea at the time the machinery was stopping, the cars still being moving, the machinery being stopped all of a sudden the momentum of the cars moved that slack forward. [118—51]

Mr. STANLEY.—I object to the answer and ask

that it be stricken as the opinion and conclusion of the witness.

The COURT.—The motion is granted.

Mr. DOUTHITT.—With your experience of five years working on that coal-conveyor, three years of which you were working as a luna as you have testified over a gang of men, I will ask you whether you know where you got that slack from to replace the cable on the Saturday immediately prior to that accident?

A. I got the slack from the cars as they kept on going after the machinery had stopped.

Q. About how many cars were there on the track at that time?

A. Well, there were several cars there at the time, some mauka of the scale-house, others makai of the scale-house on the Waikiki track.

Q. Were there any cars on the Ewa track?

A. This tower at that time was near the makai end, and the car to my recollection was about fifteen feet mauka of the makai end.

Q. Do you remember how far the tower was back, —was mauka of the end? I will take, for example, this stanchion or post, how far mauka of that the first tower was on the Saturday immediately prior to the time that Ward was hurt?

A. Fifteen feet mauka of the end of this conveyor as indicated would be about the middle of the tower.

Q. And where were the cars with respect to the tower as to whether they were mauka of the tower or makai of the tower? A. Mauka of the tower.

(Testimony of James Akina.)

Q. Now, after you had lifted the weight or lowered the weight on that Saturday, did you have occasion to observe the running of the cable at the makai end?

The COURT.—State the width of the tower; referring to [119—52] width as along the track as it travels?

A. Along about twenty feet more or less.

Mr. DOUTHITT.—That is from this point to this point on the model, calling your attention to the points which run on the tracks here?

A. It may be twenty feet or more.

Q. Well, now, with respect to the entrance, the immediate beginning of the first pulley, have reference to the makai end of the coal-conveyor, where was this tower,—that is, where was this portion, the extreme makai end of the tower, can you place that, about how *how* far from this first pulley?

(Witness places tower on model.)

Q. And the cars as I understand you were on the Ewa track or behind the tower?

A. Along here (indicating on model).

Q. Getting back to the makai end of the tower, I will ask you, Mr. Akina, after you had lowered the box or the weight and the machinery had been started and the cable was going around its position, around on the coal-conveyor, did yiu have any occasion to observe how this cable was running at the makai end around those pulleys? A. Yes.

Q. Now, will you describe to that jury what you saw there and why you were there?

A. Well, the wire had slipped off the pulleys at

that point and after replacing it the machinery was started and I came back there to try to find out the cause why that cable slipped off the pulleys at that point.

Q. And what did you find out?

Objected to as calling for the conclusion of the witness.

Mr. DOUTHITT.—I will reframe the question. What did you then observe?

A. I came there and watched the cable as it went around and I noticed the cable at that point slip and keep going up and down around the pulleys. [120—53]

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

January, 1914, Term.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY,

Defendant.

Wednesday, May 27th, 1914.

Direct examination of JAMES AKINA, resumed.

Mr. DOUTHITT.—Mr. Akina, how many coal-cars were in use on the coal-conveyor of the Inter-Island Steam Navigation Company at the time of the accident to Mr. George Ward? A. Twenty.

Q. Do you know what the carrying capacity of

(Testimony of James Akina.)

those coal-cars is?

Objected to as incompetent, irrelevant and immaterial and having no bearing on this case.

The COURT.—What is the purpose of this?

Mr. DOUTHITT.—If your Honor please, it has been testified here that the slack was obtained by the momentum of the cars on the Saturday immediately prior to the accident so that there was no necessity for lifting the weight on the box because the slack **[121—54]** was still there.

Objection overruled. Exception. Exception allowed.

A. Each car carries about two tons.

Q. And what is the weight of the car?

A. Well, I don't know the exact weight of the car from my attention to the running of the scale, but what has been told me and what I know is that each car carries as much as two tons and sometimes three tons.

Q. You mean the car and the coal would weigh three tons?

Objected to as leading. Objection sustained.

Q. What do you mean by the three tons that you have said they would sometimes weigh?

A. That is the weight of the car and the coal, three tons. Sometimes two tons and over, and sometimes as much as three.

Q. On the Saturday immediately prior to the accident to the plaintiff in this case, how many cars—loaded cars were there between the two towers?

A. Two were filled with coal.

(Testimony of James Akina.)

Q. Will you please designate upon some position on the model the position of those two cars loaded with coal as you have described?

A. That tower should be a little further this way.

Q. Move it to the point where you think it ought to be.

A. (Witness moves tower on model.) The coal-cars would be about here (indicating). There was one car under the mauka tower being filled at one time.

Q. There was one tower under the mauka tower being filled with coal immediately prior to the cable coming off Saturday, prior to the accident, and there were two cars, as I understand you, between the mauka tower and makai tower on the Waikiki track, is that correct? A. Yes.

Q. How many empty cars were on the Ewa track? [122—55] A. About six cars.

Q. How many cars were going around the Waikiki track towards the coal-yard?

A. About eleven.

Q. Were those cars loaded or unloaded?

A. Part of them were filled and part empty.

Mr. STANLEY.—On the Waikiki side?

A. Some were on the Waikiki track and some were on the Ewa track.

Mr. DOUTHITT.—Do you know how many full cars were traveling around on the Waikiki track to the coal-yard awaiting the process of being dumped, —traveling along to be dumped, at the time immed-

(Testimony of James Akina.)

iately prior to the time that the cable slipped off on Saturday?

A. Well, the cars were not close to each other, there was fifteen feet more or less between each car as they started to go towards the coal-yard. It is my recollection that there were five or six loaded cars started on towards the coal-yard at the time on the Waikiki track.

Q. When the cars are in motion and when the engine is suddenly shut down, what do the cars do, if anything? A. They continue to move.

Q. About how far?

A. Between seven and eight feet.

Q. Who was the one who adjusted—who ungripped the cars when they arrived at the scale-house for the purpose of being weighed, and who attached the cars to the hauling cable when finished with weighing when they were on their way to the coal-yard? A. Jimmie.

Q. Who is Jimmie? A. Jimmie Akina, my son.

Q. Is he still working there? A. Yes.

Q. Do you know, Mr. Akina, with what does he raise the cable, if with anything, or did he raise the cable? A. A hook.

Q. Do you know how far that cable while in use and operation [123—56] was capable of being raised by means of the hook by hand at that point?

Mr. STANLEY.—We object to that as irrelevant, immaterial and incompetent and having no bearing on the case.

Mr. DOUTHITT.—We want to show that there

(Testimony of James Akina.)

always had to be slack in the cable itself, that it can be raised by hand, and it is testified here that it can be put back by hand.

Objection withdrawn.

(Last question read.)

Mr. DOUTHITT.—At the scale-house.

A. Sometimes lift it up two feet, two and a half, to four feet.

Q. And how old was your son? A. Eighteen.

Q. That is, you mean that it is capable of being raised all the way from two feet to four feet while the cable is being run?

Objected to as leading.

Q. What do you mean by that?

A. While the cable was still running.

Q. Well, running, what do you mean by running; you mean that there were any—with respect to cars, loaded cars, what do you mean by running?

A. The cable was in use sometime when the cars were loaded and sometimes when the cars were unloaded.

Q. I will ask you if it was possible to raise the cable two feet while the cable was in use and loaded cars were attached to the case? A. Yes.

Q. And on this particular cable I am referring to. Now, Mr. Akina, will you step down here and explain by the use of this model the different sheaves on which this cable is passed in its way around the coal-conveyor, the pulleys, sheaves, [124—57] drums? We will take this on the Waikiki side, the cable coming down, which way was the cable

(Testimony of James Akina.)

running on the Saturday immediately prior to the accident? A. Running mauka.

Q. Running mauka; that is in what direction in respect to the coal-yard?

A. Running mauka and then Waikiki towards the coal-yard.

Q. Now, as it came down running mauka and reached a position just makai—reached a position mauka of the scale-house there, through what does or did that cable pass?

A. It goes through a pulley there and then down to the engine-room.

Q. It goes through this pulley at the point marked B. It passes down through the floor of the coal-conveyor over the pulley marked B? A. Yes.

Q. Going from the point marked B as I understand you, it passes over this sheave or pulley down to what point?

Mr. DOUTHITT.—I am referring to the main hauling cable over the sheave marked B. Now, from that point where did the cable go?

A. It comes down to this drum here and coils around it four times.

Q. Comes down to the drum and is wrapped or coiled around four times. What is the purpose of coiling or wrapping it around the drum four times?

A. So that when the cable is pulling the loaded cars it won't slip.

Q. After passing around the drum four times where does it go? A. Here (indicating).

Q. It passes from the drum to the first mauka

(Testimony of James Akina.)

pulley above the weight on the model. Then where does it go?

A. Down again, through the pulley of the weight. [125—58]

Q. And up through where?

A. Up to the makai pulley above the weight.

Q. Then where?

A. Goes up through the pulley a little below the floor of the conveyor.

Q. Then where does it go?

A. It runs from there in the regular groove around the coal-yard.

Q. This model only represents, as I understand, Mr. Akina, the coal-conveyor as it was on the wharf, not the coal-yard or the other portions of the coal-conveyor? A. Yes.

Q. When the cable was in operation on the coal-conveyor, I will ask you, Mr. Akina, whether there was any slack so far as these cables, both cables, were concerned?

Objected to as already asked and answered.

Mr. DOUTHITT.—It may be contended that while there was slack at this particular portion of the coal-conveyor, at the scale-house, there may be some question as to there being slack at another portion of the coal-conveyor and I want to show that there was slack at other portions of the conveyor.

Mr. STANLEY.—The objection is withdrawn.

A. Yes, sir.

Mr. DOUTHITT.—Now, Mr. Akina, coming back to the weight, you say that on the Saturday imme-

(Testimony of James Akina.)

diately prior to the Monday when the plaintiff was hurt in this case, that the box was raised?

A. Yes, sir.

Q. Where did you get your slack at the time the box was raised?

Objected to as already asked and answered.

The COURT.—At what time?

Mr. DOUTHITT.—On the Saturday.

Objection overruled. Exception. Exception allowed. **[126—59]**

Mr. DOUTHITT.—When you raised the weight at the box where did you get that slack, the slack caused by the raising of the weight, where did you get it, where was the slack?

A. When we lifted the weight there was a slack at the box and we thought that was on account of the cable having sprung from the pulleys, and we went up there thinking to pull the cable back and get that slack that was in the weight there back on the pulleys, but when we got on top of the conveyor the slack was still there, the slack where the cable had got off the pulleys, and we replaced that and came back and still found the slack at the weight.

Mr. STANLEY.—I ask to have that portion stricken out as to what his thoughts were.

Mr. DOUTHITT.—Let the thought go out, if your Honor please, we don't want that. We want the rest of it in.

The COURT.—The portion as to what the witness thought and what other people thought may go out. The motion is granted as to the portion in which the

(Testimony of James Akina.)

witness expresses the thoughts of himself and others.

Mr. DOUTHITT.—The rest of the answer may stand, your Honor?

The COURT.—The rest of the answer may stand. What he actually observed is responsive to the question.

Mr. DOUTHITT.—Mr. Akina, I will ask you if by raising the weight as you did on the day, the Saturday immediately prior to the accident, whether by the mere operation of raising the weight that would give you any slack at the makai end of the coal-conveyor? A. No.

Q. In order to get the slack occurring at the weight when raised, in order to get the slack at the makai end of the coal-conveyor, in order to use that slack at the box, how would you get it over to the makai end?

A. You would have to **[127—60]** pull the slack in the box to get it to the makai end of the conveyor. We would have to keep pulling that slack up towards mauka on the Waikiki side of the conveyor until that slack was finally drawn around on the Ewa track around to the makai end of the conveyor.

Q. Why could it not be taken, if you know, and pulled immediately makai instead of going around the whole conveyor?

A. The reason is, the cable here on the Waikiki track goes up mauka and goes down to the engine-room and is wound around the drum and the slack is over here at the weight, and that slack we cannot

(Testimony of James Akina.)

get that to run makai, but it has to follow the course of the cable as it goes up and runs along the track.

Cross-examination of JAMES AKINA.

Mr. STANLEY.—Mr. Akina, you say that you went to work for the Inter-Island Company about five years before Mr. Ward's accident, is that right?

A. Yes.

Q. And at that time you were working under Ward during the course of the erection of the coal-conveyor? A. Yes.

Q. And what part of the coal-conveyor—what part did you take in the erection of the coal-conveyor?

A. Well, whatever he ordered me to do.

Q. Well, were you busy erecting the woodwork or the machinery?

Mr. DOUTHITT.—I desire to ask one question more.

Q. Mr. Akina, at the time that George Ward was hurt, and at the time the new drum was put in, which was, as you have [128—61] testified, about a month before the accident, I will ask you whether or not the Inter-Island Steam Navigation Company had a spare cable which could have been installed, a new or spare cable? A. Yes, sir.

Mr. STANLEY.—Well, were you busy erecting the woodwork or the machinery?

A. Well, the steel work and iron.

Q. Including the rails there? A. Yes.

Q. The pulley work? A. Yes.

Q. And the towers generally? A. Yes.

(Testimony of James Akina.)

Q. And you and Mr. Ward were working around the makai end of the conveyor installing the machinery there? A. Yes.

Q. And when was that conveyor built?

A. I don't remember the time.

Q. About how many years ago?

A. Six or seven years.

Q. Now, you say afterward you were a luna on the coal-conveyor; what exactly do you mean by that?

A. Well, I was ordered to take charge of the conveyor there and see that the men worked properly on the conveyor subject to Mr. Gedge's orders.

Q. And was that your position at all times after you got through with the erection of the conveyor and up to the time that Ward was hurt?

A. Yes.

Q. Is it not a fact, Mr. Akina, that you were working under Mr. Ward at times after the coal-conveyor had been erected and up to the time that Ward was hurt? A. No.

Q. Is it not a fact, Mr. Akina, that it was only while the Inter-Island were loading its own boats, the Inter-Island boats, that you had charge of the conveyor, and that when foreign ships came in bringing coal that had to be unloaded that Mr. Ward was in charge of the conveyor?

A. Yes, sir. **[129—62]**

Q. So that it is true then, is it, that whenever foreign ships came in, or coal ships came in to discharge coal there Mr. Ward was in charge of the conveyor and you were under him?

(Testimony of James Akina.)

A. Well, some things, because when foreign coal bottoms were alongside the dock there I would have charge of the conveyor and Mr. Ward be down on the ship and I would attend to the running of the conveyor and if there was anything out of order that I could not repair, then I would give orders for Mr. Ward to come up and do it.

Q. You would give orders to Mr. Ward, is that true? A. In some things.

Q. Then Mr. Ward was under you, was he, so far as the repair of the conveyor was concerned?

A. Well, he was ahead, above me.

Q. Now, do you want us to understand that Mr. Ward's duty was to tally coal coming out of the vessels, that was his ordinary duty, and yours it was to look after the running of this conveyor?

A. Yes, I was luna on the coal-conveyor.

Q. And Mr. Ward's main duty was to tally coal on the vessel, is that true?

A. Well, not only to look out for coal that was coming out of the ship, but to come and look over the conveyor, generally.

Q. Not only tallying coal, but he had the oversight and supervision of the coal-conveyor? A. Yes.

Q. He was, was he not, the chief superintendent of that coal-conveyor? A. Yes.

Q. That was the language you used, was it not, when you were testifying on the last case?

Objected to.

The COURT.—Is it for the purpose of impeachment? **[130—63]**

Mr. STANLEY.—No, your Honor.

The COURT.—Objection sustained.

Mr. STANLEY.—What, exactly, did you mean by saying that Mr. Ward was chief superintendent on the coal-conveyor?

A. The officers of the company would give him orders and he would give orders to me and I had to carry it out because he had more authority than I had.

Q. And whenever anything went wrong with the conveyor while they were unloading these foreign ships, it was Ward who attended to the repairing?

A. Yes.

Q. And before you joined the Inter-Island service what was your profession, Mr. Akina?

A. Running a pump.

Q. Now, when was it that you first observed the poor condition of the cable that was in operation at the time that Ward was hurt?

A. The month after a coal vessel had come in?

Mr. DOUTHITT.—No.

The INTERPRETER.—That is the way I understood it.

A. Yes, one month after the coal vessel had come in.

Mr. STANLEY.—What coal vessel are you referring to?

A. The coal vessel that was unloading or was being unloaded when George Ward met his injuries and had the accident.

Q. Well, I suppose you really mean—I don't want

(Testimony of James Akina.)

to mislead you or take advantage of you. You really mean after Ward was hurt, a month after, while that coal vessel was in, a month after you first observed the condition of the coal-conveyor, is that it?

A. I mean the reverse of the last statement.

Q. You meant a month before?

A. I had seen it a month previous to the coal vessel coming in.

Q. Now, what was the condition of this cable at that time? **[131—64]**

A. The wires had come out and stuck out like burrs.

Q. The wires had come out of the cable and were sticking out like burrs, is that it? A. Yes.

Q. And was that the condition of the cable throughout its entire length? A. Yes.

Q. And these wires at that time were sticking out anywhere from one-sixteenth of an inch to an inch?

A. Well, these wires were sticking out at that time and gradually kept getting worse, more of them coming out as we kept on using the cable.

Q. But at the time that you first observed it, a month before Ward was hurt, they were sticking out from a sixteenth to a half an inch or an inch all around this cable? A. Yes.

Q. Now, were they sticking out perpendicularly or horizontally, or how,—on a line with the main bit of cable, or sticking out at right angles to it, or how?

A. They were sticking out in all directions.

Q. And this was a condition, was it, that was

(Testimony of James Akina.)

plainly observable? A. Yes.

Q. Then having noticed that, what did you do?

A. Well, the cable, on account of this condition, kept getting tangled around the drum, so I telephoned down to Mr. Gedge.

Q. Why did you telephone to Mr. Gedge?

A. Well, the cable was getting bad and getting tangled up.

Q. Do you remember what time of the day it was that you telephoned to Mr. Gedge?

A. It was in the morning, somewhere around nine o'clock.

Q. Had you seen Mr. Gedge before that morning?

A. No.

Q. Is it not a fact that Mr. Gedge gets down there to the coal-conveyor the first thing in the morning when you get to work, and is there on and off through the day five or six times? **[132—65]**

A. That is true enough when there is a coal vessel in port.

Q. But not otherwise?

A. Some other times he would come in two or three days a week.

Q. Well, you telephoned to Mr. Gedge, and what did Mr. Gedge say? Tell us first of all, what did you say to Mr. Gedge, and tell us in English. I will ask you, what language did you speak to Mr. Gedge in?

A. In English.

Q. Now, tell us in English what you said to him?

A. I told Mr. Gedge about fixing the wires creeping on the drum.

(Testimony of James Akina.)

Q. What else did you say?

A. I told him about the wire.

Q. Tell me what you said to him.

A. I told him about the wire, is bad wire.

Q. What?

A. I told him the wire is bad, is creeping on the drum.

Q. Yes, anything else?

A. And Gedge told me to—that he would go down and get George Ward and—Mr. Gedge told me to go down to the shop and get George Ward to come up and size up the cable.

Q. That is what Mr. Gedge told you, that he was going to go and get Mr. Ward to size up the cable?

A. Yes.

Q. Was anything else said?

A. Mr. Gedge and Mr. Ward came up that morning.

Q. When you telephoned, was anything else said between you and Mr. Gedge?

A. Yes, I told Mr. Gedge to take that wire off.

Q. What?

A. I told Mr. Gedge that morning to take that wire off.

Q. And you told him this over the telephone?

A. What?

Q. And you told him this over the telephone?

A. No, I telephoned to him to come up. [133—66]

Q. And Mr. Gedge telephoned back to you saying that he would get Ward to come down and size up the cable, is that right?

(Testimony of James Akina.)

A. When I telephoned to Mr. Gedge he came up. He came up alone that time.

Q. I am asking you what Mr. Gedge said to you over the telephone.

A. Well, I telephoned to him and he said he would come up, and he came up.

Q. Did he tell you then that he would get Mr. Ward to come with him? A. No.

Q. He just said he would come? A. Yes.

Q. Now, when did Mr. Gedge come there?

A. Shortly after the telephone.

Q. And was he accompanied by anybody, or did he come alone? A. He was alone.

Q. And did you have a talk with him, then?

A. Yes.

Q. And who was present during that talk?

A. Mr. Gedge and myself.

Q. Mr. Gedge and yourself; and where did the conversation take place? A. In the engine-room.

Q. Now, will you tell us what you said to Mr. Gedge on that occasion, and please tell us in English?

A. I told Mr. Gedge about the wire is pretty bad, and Mr. Gedge told me that he is going down to take George Ward and come up and look at the cable.

Q. Is that all?

A. And Mr. Ward and Mr. Gedge came up that morning.

Q. I am just asking you about your talk with Mr. Gedge alone in the power-house; did anything more pass between you and Mr. Gedge except what you told me?

(Testimony of James Akina.)

A. Well, I told him about the cable there being in a poor condition and told him I thought better to have the cable changed and have a good one [134—67] put in.

Q. Did you say anything to him about the drum?

A. Yes. Well, I told him that the drum itself was wearing out and was sagging down and I told him they could change the cable,—when we had a new one put in, might as well have a new drum put in also.

Q. Your idea was that the thing that wanted attention first was the cable, and when you were putting in the new cable you might as well put in a new drum, is that it? A. Yes.

Q. Didn't you testify on the last trial that in your opinion that the real cause of trouble was the machinery there, the drum and not the cable?

A. I told him both about the machinery and the drum, as well as the cable, the bad condition of the cable.

Q. Well, didn't you tell him, as a matter of fact, that the drum was in bad condition, and that it was putting the cable in bad condition?

A. I told him that the wire was in bad condition and was being tangled up all time, and that the drum was sagging; every time we used it, it got worse and worse.

Q. And that the condition of the wire,—of the cable was caused by the poor condition of the drum?

A. I did tell him it was on account of the condition of the drum and the cable crossing over each other.

(Testimony of James Akina.)

Q. What is that? A. Cable crossing over itself.

Q. On the drum? A. Yes.

Q. Now, then, you say, Mr. Gedge went away and brought Mr. Ward down, is that right? A. Yes.

Q. And were you present at the conversation that took place between Mr. Ward and Mr. Gedge?

A. Yes.

Q. And where did that take place?

A. In the engine-room. [135—68]

Q. The three of you being present during the conversation? A. Yes.

Q. Now, state what occurred?

A. Mr. Ward, after looking over the machinery and the cable told Mr. Gedge that he thought it advisable to remove the cable and have it replaced with a new one and have the drum also replaced at the same time so as to avoid any further trouble in the future.

Q. Did he say what kind of trouble might be caused if the drum was not replaced?

A. Well, I don't know; that is all I heard.

Q. Well, were you present during the whole conversation?

A. Well, I heard Ward telling Mr. Gedge to have that drum taken out and put a new one in.

Q. Heard Mr. Gedge tell Mr. Ward that?

A. No, I heard Mr. Ward tell him that.

Q. What else did Mr. Ward tell Mr. Gedge besides taking out the drum and having a new one put in?

A. Well, after Mr. Ward had suggested the change Mr. Gedge turned around and said, "No, take the drum out and put a new one in. The cable is all

(Testimony of James Akina.)

right, leave it alone."

Q. And what did Mr. Ward say to that?

A. "Well, we will follow your instruction and take out the drum and replace it."

Q. That is all he said, I will just follow your instructions and put a new drum in? A. Yes.

Q. There was no discussion between you about it. As soon as Mr. Gedge says, "No, the cable is all right, put in a new drum," Mr. Ward says, "I will follow your instructions?"

A. Well, prior to that, Mr. Ward had already told Mr. Gedge that he thought that the cable as well as the drum should be replaced by good ones, and Mr. Gedge said, "No, leave that cable [136—69] alone, but remove that drum and put a new one in," that is when he made his answer to him, "We will follow your instruction."

Q. But as I understand it was just a suggestion made by Mr. Ward that a new cable should be put in and a new drum, and Gedge comes back and says, "The cable is all right, put in a new drum," and Mr. Ward said, "I will follow your instructions and put in a new drum," that is all? A. Yes.

Q. And this discussion—this conversation took place in the power-house where this condition, the rotten condition of this cable was plainly observable?

A. Yes.

Q. And you heard all that took place? A. Yes.

Q. Now, Mr. Akina, about this time, that you say you made the complaint, sometime towards the beginning of June, 1913, you knew, did you not, that a

number of coal vessels were expected from abroad—1912?

A. Well, yes. Of course, whenever a coal vessel was expected, I would receive orders to get the conveyor in readiness.

Q. And you knew at this time that a number of vessels were expected shortly? A. Yes.

Q. And you say whenever coal vessels were expected, you received orders to see that everything was in proper running order? A. Yes.

Q. And by proper running order you mean that the cable was all right and the machinery in an efficient condition? A. Yes.

Q. And is it not a fact that before these coal vessels came in there was a general overhauling of the machinery down there, a general inspection of the cable and everything under Mr. Ward's supervision?

A. Well, I got orders two or three days before the vessel come in port, but George Ward, before the [137—70] vessel gets in would come down there and look over things.

Q. And these vessels that were expected, that you expected somewhere towards the beginning of June arrived, did they not, towards the end of June?

A. I don't remember the exact date.

Q. Well, let us try to look it up. How long had those vessels been in,—how long prior to this accident had the first of those vessels come in?

A. I don't remember.

Q. Perhaps we will get it in another way. Do you know whether or not George was hurt while the first

(Testimony of James Akina.)

of those vessels was in, or the second?

A. It is so long ago, and I had to pay attention to my own work, I cannot remember all.

Q. Then, perhaps, we will refresh your memory from the testimony on the direct examination. You said that one of these vessels took five and a half days to unload, and the second took six days; is that right?

A. Yes.

Q. And is it not a fact, Akina, that the second vessel—the unloading of the second vessel had not been finished at the time that Ward was hurt? A. Yes.

Q. And you testified, did you not, at the last trial, that the apparatus, the whole machinery there, was generally overhauled towards the end of June, 1912?

Mr. COKE.—We object to that; there is nothing in his testimony here that would impeach him. We submit that counsel has no right to rehearse his testimony in the last trial.

Objection sustained.

Mr. STANLEY.—Is it not a fact that just prior to the first of those vessels arriving that the machinery and the whole conveyor was generally overhauled? A. Yes.

Q. Did you not testify at the last trial that was towards [138—71] the end of June, 1912?

A. Well, that is the customary order to us, and we always receive that order shortly before a coal vessel was expected.

Q. And you know that that was done at this time?

A. Yes, and at all times.

Q. And it is a fact, is it not, that the overhauling

(Testimony of James Akina.)

and the superintendence of the overhauling of the conveyor at that time was done by Mr. Ward before the coal vessel arrived? A. Yes.

Q. And how shortly before the arrival of the first coal vessel was that general overhauling made?

A. Well, sometimes you will get the order two weeks, sometimes a month before the vessel is expected, and you cannot work every day, because the Inter-Island boats will be coming in for coal and we are attending to that, and when we are not busy we are getting the conveyor ready to receive the coal from the foreign bottoms.

Q. And how long did this overhauling last?

A. Sometimes it takes two weeks and sometimes we will not be through overhauling when the vessel arrives.

Q. In other words their overhauling is made when coal vessels are expected, is that right, and was made in this case? A. Yes.

Q. I understand you that before the coal ships arrive Mr. Gedge gives the order that this general overhauling should be done? A. Yes.

Q. Now, you stated that Mr. Gedge agreed about a month pervious to Mr. Ward's accident that a new drum should be put in; was such a new drum installed? A. Yes, sir.

Q. And how long after this conversation that you have testified took place in the power-house or engine-house? A. The same day.

Q. The very same day, and do you remember the date that was? [139—72] A. No.

Q. You were in the habit were you not of making

(Testimony of James Akina.)

reports to the Inter-Island office of the particular work down from day to day? A. Yes.

Q. These reports were made in English, were they not? A. Yes.

Q. I will ask you to examine this paper I hand you, and state whether or not that is one of your reports? A. Yes.

Q. Now, will you examine that and state whether or not after examining it you have refreshed your recollection as to the time that this drum was put in?

A. The 6th of June.

Q. The report so states? A. Yes.

Q. The new drum was put in, now, that you have refreshed your recollection, on the 6th of June, 1912?

A. Yes.

Q. Now, you testified, Mr. Akina, that all the time right up from that date, June 6th, up to the time that Ward was hurt, the cable was visibly becoming worse and worse, is that right? A. Yes.

Q. And at the time that you spoke to Mr. Gedge on this 6th of June, the conveyor was being operated merely for the purpose of loading Inter-Island boats? A. Yes.

Q. And was working an hour or so a day?

A. Sometimes three or four hours, sometimes an hour, it depends on how many steamers were alongside the conveyor.

Q. And working a comparatively short time as compared with the work when the coal vessel is in?

A. Yes.

Q. Now, Mr. Akina, is it not a fact that with this

(Testimony of James Akina.)

cable, poor as you say it was, the Inter-Island did better work than with any other cable it previously had? Is it not a fact that the Inter-Island with this cable did better work than with any other cable you ever had? **[140—73]**

A. Well, this cable I am just speaking of had been used for some months, but as to the number of cables that had been used, and used before that time, I don't remember.

Q. Didn't you testify in the last trial that this cable had done better work up to the time that Ward was hurt than any cable you had ever had before; that is you had taken out more coal with it in a given space of time than you had ever done before?

A. Yes, sir.

Q. The object of this overhauling of the machinery, Mr. Akina, is to see that while coal vessels are in the work will proceed steadily and without any interruption on account of a bad cable or anything else?

Objected to. Objection overruled.

A. Yes, sir.

Q. The object being to have these vessels unloaded as quickly as possible? A. Yes.

Q. And with a view to the proper running of the conveyor a spare cable was kept on the dock, a new cable ready for use at all times necessary?

A. Yes.

Q. Now, about this—on this Saturday before George—before the accident to Ward, where were you at the time the cable came off the pulleys?

(Testimony of James Akina.)

A. I was in the scale-house.

Q. And how long had you been there before the cable came off. A. Ten or fifteen minutes.

Q. What were you doing there?

A. I come from mauka and had come and got to the scale-house and was watching the cars as they went past.

Q. Did you count the cars as they went past?

A. No, not at that time, after the cars were stationary and we went down, then I noticed them. [141—74]

Q. While you were at the scale-house were you counting the loaded cars as they went past?

A. No.

Q. And what was the first thing you heard of the cable being off while you were at the scale-house?

A. Well, I saw the men at the makai end here putting up their hands and beckoning me to come down.

Q. Did they say anything or shout out anything?

A. They called out but I was so far mauka I could not hear.

Q. And you were at a distance of several hundred feet away from the makai end of the conveyor?

A. Yes, sir.

Q. And what did you do then?

A. I came makai.

Q. Was the cable still running? A. Yes.

Q. And when you got there you found that the cable was off the trolley,—pulleys?

A. The cable was off from the pulleys and was keeping coming off, getting off more pulleys.

(Testimony of James Akina.)

Q. But the cable was still running?

A. Yes, sir.

Q. Now, is it not a fact, Mr. Akina, that whenever the cable comes off the pulleys that the engine is immediately stopped? A. Yes.

Q. And it is immediately stopped, is it not, so that it won't come off any more pulleys?

A. So that the cable won't come off any more pulleys, yes.

Q. And the men at the towers have instructions, have they not, whenever the cable comes off to immediately give the signal for the engine to be stopped?

A. Well, that is if they see it they go out and stop the machinery themselves or give the signal. In this instance they saw me to give the signal.

Q. But as a usual thing—the usual thing is the moment [142—75] the cable comes off the pulleys to give the signal to stop the engine so that the cable don't come off any more pulleys? A. Yes.

Q. And a boy is stationed at the scale-house not only for the purpose of switching the cars from one part of the cable to the other, but also for the purpose of twisting or turning this attachment of the throttle which stops the engine? A. Yes.

Q. But on this particular Saturday they—the men here who saw the cable come off did not give the order for the signal for the engine to stop but allowed it to run and come off more pulleys until you got up there, is that right?

A. Well, one of the boys down here, one of the trackmen, as soon as the one down here beckoned out

(Testimony of James Akina.)

to me I started to run makai, and as I come down I noticed the cable coming off more pulleys and I grabbed hold of the boy who was in danger zone and shoved and pushed him to one side mauka.

Q. What boy was that that you pushed out of the danger zone? A. Nunu.

Q. Come and show us where Nunu was in this danger zone? A. Kale, his name is Nunu.

Q. That is a man known by various names among the men, one name Nunu, another Kolei. So the men called him Kolei, didn't they?

A. We called him Kolei because he is hard of hearing, but his name is Nunu.

Q. Now, you say that you got down here and found Nunu, or Kolei, in the danger zone; whereabouts was it?

A. Well, he was standing about there (indicating on model).

Mr. STANLEY.—We will mark this C.

Q. That is approximately at the spot marked C on one of the planks at the makai end of the coal-conveyor?

A. He was standing in that position and I noticed the cable coming off the pulleys on the Ewa side and was getting off more [143—76] pulleys when I grabbed hold of him and shoved him mauka.

Q. Who else was down there besides Nunu?

A. Well, the other boys were not makai here they were under the hopper. Nunu was stationed in that position to stop the car as it came in that position

so that it would go slowly and get under the hopper.

Q. And when you heard this shouting and did not understand what it was—where is the man, still working under the towers? A. Yes.

Q. Nunu is a man, is he, now, who had worked for a considerable time down at the conveyor previous to this Saturday? A. Yes.

Q. Do you know why it was that on this particular occasion when the cable came off the pulleys that the engine was not immediately stopped?

A. Well, when I got down there I saw the cable had started to come off the rest of the pulleys there and I grabbed hold of Nunu and shoved him off and at the same time I gave a motion to stop the engine.

Q. Do you know why it was that after it came off and Nunu was here and you were down at the scale-house that the order was not immediately given to stop the engine?

Objected to. Objection withdrawn.

A. Well, they had been accustomed to that, whenever they saw me they would first call me to the scene of the trouble; whenever I am away they can give the signal direct themselves.

Q. So that you mean if you were away down one-eighth of a mile on this conveyor and they saw you, they would wait until you came up and would not stop the engine?

A. If I was that distance off from that conveyor they would not be able to see me.

Q. But if they could see you then you say the custom is— [44—77] if they could see you to let

(Testimony of James Akina.)

it go off as many pulleys as it liked until you got there and gave the order to stop the engine?

A. Well, I had given them instructions whenever I was near, within call, to call me, and in this instance I was near where they could see and call me. Sometimes I am in the coal-yard and when anything should happen all they have to do is to stop the machinery without waiting for me.

Q. You knew, did you not, that the way to stop—if you stop the engine the cable would stop coming off the pulleys, wouldn't it?

A. Well, your Honor, when I was down there the cable was still coming off the pulleys, how many pulleys it came off I don't know because I immediately turned around—

Mr. STANLEY.—I am not talking about that. You know, as a matter of fact, do you not, that if *your* stop the engine and the cable is off the pulleys, it will stop coming off any more?

A. Well, I didn't watch it that time when I came down, the cars were still running and cable in operation.

Q. When was it that you gave instructions that if the cable came off the pulleys and you were in sight that they should allow the cable to still run until you could give the order to stop the engine?

Mr. DOUTHITT.—That is not a correct statement of the testimony at all, if your Honor please.

Mr. STANLEY.—When was it that you gave the instructions that if you were in sight the men should not do anything in connection with the cable until

you had a chance to be called to give the orders?

A. My instructions were at all times whenever anything happens—when anything happens when I am not around, to stop the machinery the first thing.

Q. And did you say if I am around and in sight don't stop it? [145—78] A. No.

A. No.

Q. Then can you explain why in this case the men who were right down here when it came off did not have the engine stopped?

A. It just happened that they saw me standing up there and they called for me to come down.

Q. And let the cable still continue to roll off these pulleys until you could walk down from the scale-house down makai there?

A. I did not walk down, I run down just as fast as I could.

Q. All right, but they were allowed to still come off while you were running down?

A. It didn't take me very long to get down there.

Q. Now, when you got down there and saw it where it was placed yesterday on top of a number of these pulleys at the extreme makai end, I think, starting at the first one of the set of sixty and extending almost to the extreme makai portion of the conveyor?

A. I told the men to go down there and lift the weight up and get the slack in the box.

Q. And they did it? A. Yes, sir.

(Testimony of James Akina.)

Q. Now, will you tell the jury why you wanted the weight raised?

A. The idea was to have the weight lifted up so as to get the slack there, then come back on the conveyor down here and if there was not sufficient slack to replace the cable on, to go up there and keep pulling the slack from the box and around and down that way to the makai end where the cable had come off the pulleys to get the slack.

Q. The first thing when the cable gets off you raise that weight to get the slack, is that it?

A. Yes, sir.

Q. And how do you get the slack; does the slack go into the box or is it distributed around the conveyor?

A. The slack is still at the weight. **[146—79]**

Q. So I understand your testimony that the slack is down in this box and lays there and is not distributed at all around there unless you go around personally and pull it every few feet or so until you get to the makai end? A. Yes.

Q. When the cable is in operation, Mr. Akina, it is a fact, is it not, that it runs fairly taut and has to run fairly taut right along the track and around the pulleys?

A. Well, there is sufficient slack there.

Q. Yes, but has it not to be of sufficient tautness in order to pull on the cars? A. Yes.

Q. Is it not also a fact, Mr. Akina, that once you raise that weight—you stop the engine and raise that weight you can immediately see the cable sag-

ging onto the track between the little rollers?

A. Well, I never paid any attention to that. Every time there is anything happened of that sort the first thing is to lift the weight and get the slack and if not enough slack go back and try to get enough slack and pull it around where it is needed.

Q. You never paid any attention whether the cable immediately sags on the floor, on the ties, when the weight is raised?

A. Our attention is generally called to where the seat of the trouble is.

Q. And on this occasion you say that you gave the order to have the weight raised and the weight being raised you came back and found enough slack here to put it back by hand? A. Yes.

Q. Now, you said that having got the cable running again, having lowered the weight again and got the cable running, you went up there and tried to find out what had caused the cable to come off, is that right? A. Yes.

Q. Well, just go back a minute. Before you stopped the engine, and having found the cable in the position you have described when it was off, that is on top of these pulleys, you say **[147—80]** that it was jumping up and down; what do you mean by that, jumping up and down from the top of the pulleys or what?

A. Running on the upper edge of the pulley.

Q. Well, do you mean on the side of the pulley or jumping up and down on the top of it?

A. On the outer edge.

(Testimony of James Akina.)

Q. Well, the outer edge is the place where it should be, should it not; that is where the cable should be, should it not, when it is in proper working order?

The COURT.—The outer edge of that battery of sixty pulleys.

Mr. STANLEY.—Yes, sir, that is before he says it was off.

A. It was slipping off the upper outer edge of the pulleys.

Q. Of what pulleys? You say it was slipping up off the upper outer edge of them?

A. I could not point out which particular pulleys, the cable kept getting off the upper edge, but it was getting off the upper edge of some of these pulleys when I turned about.

Q. Is it not a fact, Mr. Akina, that at the last trial of this case you did not testify to observing any such thing?

A. I was not questioned as to that.

Q. You were put on the stand as the witness of Mr. Ward by Mr. Douthitt, were you not?

A. Yes.

Q. And whether questioned or not you made no statement about seeing the pulleys—the cable having a tendency to raise off these pulleys?

Objected to as asked and answered. Objection overruled.

A. Well, my recollection is I was asked as to whether the cable came off or not and I said yes, the cable was off the pulleys. I don't remember being

(Testimony of James Akina.)
asked as to whether—what the cause was, what caused the cable to come off and I did not answer.

Q. Now, you have advanced the theory that the slack down at [148—81] the makai end at the time the cable came off Saturday was obtained by the momentum of the cars?

Mr. DOUTHITT.—He testified it was a fact, not a theory.

Mr. STANLEY.—Now, you say, Mr. Akina, that there was a loaded car—two loaded cars between the two towers, is that right, on this Saturday?

A. Yes.

Q. And there was another loading under another

Q. Now, is it not a fact that when you have a car tower, is that right? A. Yes.
loading here and loaded cars behind it, that those cars are not allowed to move until this car is out of the way?

A. Yes, sir, the cars makai of the mauka tower are filled with coal from this other tower and there is another car under the mauka tower being filled; these cars are run up to the car being filled and are blocked by that car being filled until that car moves on.

Q. Do you know whether or not the two loaded cars between the towers were moving on this Saturday?

A. They were standing near where the car was being loaded.

Q. And when the cars were standing and the cable is running, the grip has to be taken off to release

(Testimony of James Akina.)

them from the cable, has it not?

A. Well, the wire, the wire cable still continues to run through this groove in the hook and it is only when the wheel is turned around and loosens the grip.

Q. That is what we might call the shoe of the car, the cable still runs through the shoe of the car, but the grip fastening the cable into the shoe is unloosed? A. Yes, sir.

Q. That as far as those particular cars are concerned when the cable was stopped why they had no momentum at the time?

A. Well, those cars were standing still.

Q. They did not influence the slack or tautness of the cable at all?

A. No, they were standing still. **[149—82]**

Q. And there was one standing down under the tower in a similar condition, was there not, with the grip unloosed? A. Yes, sir.

Q. And makai of that—mauka of that, you say, there were other cars traveling. How many cars were there on this Waikiki track moving, moving cars? A. There were at least five loaded cars.

Q. How do you know that?

A. Well, they were almost in a line there, one after another, on their way to the coal-yard. As I glanced around there were about five going out that way loaded and the unloaded cars were returning on the opposite track.

Q. And when was it that you took notice of this

(Testimony of James Akina.)

and know that there five cars going towards the coal-yard?

A. There were less cars on this side and the six empty cars on the Ewa track and three cars on the Waikiki track, there was one car loaded that had just been through the scale-house and just moved away from the scale-house.

Q. And there were at least five loaded cars on this Waikiki side all traveling towards the coal-yard, is that it? A. That is my recollection.

Q. And so far as they were concerned, the effect of the momentum when the cable stopped was to drag the cable in a mauka direction?

A. Yes, sir.

Q. Away from this maiki end?

A. Yes, sir. Because the cable goes up to the point up there and goes down and then comes up again through the conveyor and runs in a Waikiki direction.

Q. Yes, but these five loaded cars that we are talking about that were on the way to the coal-conveyor were mauka of the scale-house and the place where you switch off from one section of the cable to another? A. Yes, sir. **[150—83]**

Q. And on the Waikiki—Ewa track you had a number of empty cars, where were they?

A. They were on the Ewa side coming down.

Q. Some of them were stationery, were they not?

A. They were all moving.

Q. How do you know?

A. They were constantly moving because if one

(Testimony of James Akina.)

car happened to stop it would start a blockade. They would have to keep moving.

Q. Is it not customary when you are loading a car to have the one behind it stop?

Mr. DOUTHITT.—Yes, but you are talking about the Ewa track?

Mr. STANLEY.—Yes, I am talking of the Ewa track.

A. Yes, sir.

Q. And you were loading cars on Saturday, were you not? A. Yes, sir.

Q. I think you testified, Mr. Akina, that when you were working on this coal-conveyor that you had eight men under you besides yourself, is that right?

A. Yes.

Q. And where were those men stationed?

A. When the coal ship was in or not?

Q. When a coal ship was not in?

A. Well, I didn't have eight men all the time. Sometimes I would only have four men, sometimes five, sometimes six besides myself. If I had five I would make the sixth.

Q. It all depended on whether a coal vessel was or was not in on the amount of work done?

A. I am supposed to have eight men at all times whether there is a coal ship in or not, but sometimes the men will lay off themselves and we are short-handed.

Q. And your regular complement is eight men? It is a fact, **[151—84]** is it not, that when a coal vessel comes in you employ in addition to those eight

(Testimony of James Akina.)

regular men about eight others? A. Yes, sir.

Q. And that is for work on the conveyor?

A. Yes.

Q. And you had such a number of extra men on the 8th of July, 1912? A. Yes.

Redirect Examination of JAMES AKINA.

Mr. DOUTHITT.—Who employed those eight men, those additional men?

A. Well, Mr. Gedge gave me the orders to pick out eight extra hands and put them to work on the conveyor.

Q. And who discharged the men if necessary?

A. I did.

Q. That is when the ship was finished you let them go? A. Yes.

Q. Now, who is the one who gave the general orders around there, the main orders, the general orders as to the conduct of the coal-conveyor?

Objected to as not proper redirect examination. Objection overruled. Exception. Exception allowed.

A. Mr. Gedge.

Q. You say that it sometimes took a couple of weeks to overhaul the coal-conveyor? A. Yes.

Q. Where was George Ward employed during the two weeks that you would overhaul the coal-conveyor? A. Down in the shop.

Q. Where are those shops?

A. The Inter-Island shops.

Q. Do you know where the Inter-Island shop is or was at that time?

(Testimony of James Akina.)

A. On River street. [152—85]

Q. River and what other street?

A. And Queen street.

Q. You say, Mr. Akina, that prior to going to work for the Inter-Island Steam Navigation Company, you ran a pump, what pump was that?

A. Ran a pump down to Waipahu for the plantation.

Q. For the Waipahu Sugar Company?

A. Yes, sir.

Q. What was the capacity of that pump?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q. When you spoke of having given orders that when the cable was off the pulleys or anything happened and if you were in the immediate vicinity you should be called what do you mean; the cable off in what portion of that coal-conveyor; what did you mean by that?

A. Any part of the conveyor, I have to be right near there for them to call my attention to it. If I am not there for them to go right ahead and stop the machinery and attend to it.

Q. If anything was wrong, that is what you mean, is it not? A. Yes, sir.

Recross-examination of JAMES AKINA.

Mr. STANLEY.—Mr. Akina, what was the nature of these general orders given by Mr. Gedge?

A. Well, sometimes coal ships would come in and

(Testimony of James Akina.)

Mr. Gedge would give me orders to move the towers into position, and sometimes when I was not there he would give it to Mr. Ward and Mr. Ward would give to me when I would come.

Mr. DOUTHITT.—I move that that portion be stricken out **[153—86]** that Mr. Gedge would give orders to Mr. Ward and it would be given to him when he come.

The COURT.—That may be stricken out.

Mr. STANLEY.—What other orders did you ever get from Mr. Gedge?

A. Orders with reference to laborers.

Q. Well, what nature?

A. Instructions as to the setting of the different men.

Q. About the employment of the different men?

A. The employment and setting them in position.

Mr. DOUTHITT.—With regard to the conduct of the work who gave these instructions?

Objected to as not redirect examination. Objection sustained. **[154—87]**

[Testimony of George E. Ward, for Plaintiff (Recalled).]

Direct Examination of GEORGE E. WARD, Resumed.

Mr. DOUTHITT.—What is your full name?

A. George Edward Ward.

Q. And where were you born?

A. In Sutter Creek, Amador County.

Q. In the State of California?

(Testimony of George E. Ward.)

A. Yes, Sutter Creek, Amador County, California.

Q. How long have you lived in the Hawaiian Islands? A. Around about thirty years, I guess.

Q. How old were you on the 8th day of July, 1912?

A. A little over forty years.

Q. What was your birthday?

A. On the 6th day of May, 1872.

Q. Then you were forty years of age on the 6th day of May, 1912? A. Yes.

Q. Where did you receive your education, Mr. Ward? A. The Saint Louis College.

Q. Here in Honolulu? A. Here in Honolulu.

Q. And after receiving your education what business did you follow?

A. Machinist, started on machinist.

Q. Where did you learn your trade?

A. Started with my father first.

Q. Your father?

A. With my father, he is in that line of business, has been all of his life. On this line with him and then on plantations, and then in several other lines of business.

Q. What plantations were you employed on?

A. There are so many of them that I could not start to tell you and name them all. There is on this island there is three plantations, Waipahu Plantation, [155—88] Kahuku Plantation—Ewa Plantation.

Q. We will just take those three plantations. In what capacity were you employed on those plantations? A. Machinist.

(Testimony of George E. Ward.)

Q. After leaving the plantations where did you go?

A. Back to Honolulu for the Honolulu Iron Works.

Q. And how long were you working at the Honolulu Iron Works, about, I don't ask you exactly?

A. About seven or eight years ago, not steady work going around to the plantations and coming back again and going away and coming back again, about eight years.

Q. In the neighborhood of about eight years?

A. Yes.

Q. Do you hold any license for marine vessels, for vessels? A. Yes, I do.

Q. What license do you hold?

A. First assistant.

Q. First assistant what?

A. Marine engineer.

Q. Did you hold that license at the time about the time—before the 8th day of July, 1912?

A. Yes, sir, I did.

Q. How long before you were injured did you hold that license?

A. About two or three years, that special form, first assistant.

Q. When did you go to work for the Inter-Island Steam Navigation Company, the defendant in this case, about when?

A. I was there about eight years.

Q. In all. A. In all, yes.

Q. Prior to the accident or your injuries?

(Testimony of George E. Ward.)

A. Yes, sir.

Q. And in what capacity were you employed by the Inter-Island Steam Navigation Company?

A. Machinist engineer.

Q. And where were you employed?

A. In the machine-shop.

Q. Were you under anybody at the machine-shop?

A. I was.

Q. Who was the head of the machine-shop?

A. Mr. Muirhead.

Q. Do you remember the construction or the erection of the **[156—89]** conveyor belonging to the Inter-Island Steam Navigation Company?

A. I do.

Q. Here in Honolulu? A. I do.

Q. Were you employed by the Inter-Island Steam Navigation Company at the time when the coal-conveyor was constructed? A. I was.

Q. Who did the work on the coal-conveyor?

A. Mr. Ouderkirk.

Q. John Ouderkirk? A. John Ouderkirk.

Q. Is that the Mr. John Ouderkirk who has since died? A. Yes, sir.

Q. Who constructed the steel work on the coal-conveyor? A. I did.

Q. Well, who furnished the plans and specifications and blue-prints, if anyone, for the construction of the steel work?

A. Mr. William Johnson gave me those blue-prints to work on.

Q. Who is Mr. William Johnson?

(Testimony of George E. Ward.)

A. He was superintending engineer of the Inter-Island at that time.

Q. Were you under him or over him?

A. I was under him.

Q. With reference to blue-prints and plants and specifications how did you construct the steel work of the coal-conveyor of the Inter-Island Steam Navigation Company?

A. Every section of that was marked by number and that number was on the blue-print. Therefore, you would see just where that number went.

Q. Was the steel work constructed by you pursuant to the blue-prints and plans and specifications furnished you? A. Yes, sir.

Q. Did you at any time have anything to do with the woodwork, that is the structural work on which the tracks were laid on the conveyor? A. No, sir.

Q. What was your principal employment in the Inter-Island Steam Navigation Company?

A. Machinist and engineer.

Q. Did you do any other work for the Inter-Island Steam Navigation Company besides being machinist and engineer?

A. Only **[157—90]** when a coal boat would arrive here, Mr. Gedge would send for me.

Q. What?

A. After a coal boat would arrive here and get here why then Mr. Gedge would send for me to go down to the conveyor.

Q. Do you know how many years ago—oh, before

(Testimony of George E. Ward.)

we get to that—how long ago was this coal-conveyor constructed?

A. About five years, I think. The present day you are speaking of?

Q. Yes. A. About five years.

Q. Now, when a coal boat came in where were you ordered to go, if anywhere?

A. Mr. Gedge would send word up to me to say that the coal boat was in; I would have to go down and find Mr. Muirhead and tell him where I was going and all. I would go down to the coal boat.

Q. By Mr. Gedge do you mean the secretary and treasurer of the Inter-Island Steam Navigation Company, the defendant in this case? A. Yes.

Q. And at those times when the coal boat was not in where were you employed?

A. Just as soon as a coal boat would get empty I would go right straight back to the shop again no matter what time of day it was.

Q. Now, by a coal boat do you mean a domestic boat or do you mean coal ships coming in from foreign ports? A. Foreign boats, yes.

Q. For the purpose of unloading coal from the boats?

A. For the purpose of unloading that coal from the boats.

Q. And taking it where?

A. Up into the hoppers.

Q. And subsequently taken where?

A. Thrown into the car and that car was taken over into the coal-yard and dumped.

(Testimony of George E. Ward.)

Q. What was the ordinary capacity of the—what is the amount of coal, the average amount of coal that was unloaded from these coal boats, the tonnage, per ton?

A. The tonnage, are **[158—91]** you speaking now of per day?

Q. Now, how many tons was the average that these vessels would make, the cargo?

A. I think they would average about five thousand tons, some would be over five thousand some four thousand. I think they would average five thousand tons.

Q. No, when you were employed at the coal-conveyor, Mr. Ward, where were you principally employed? A. On board the ship.

Q. And what were you doing on board the ship?

A. Watching the men how they got their coal out and sometimes down in the hold from one hold into the other hold superintending the discharging of that coal in the ship? In other words bossing the men on the ship.

Q. Bossing the men. Do you know James Akina, one of the witnesses in this case? A. I do.

Q. Well, while you were employed by the Inter-Island Steam Navigation Company where was he employed, upon what portion of the coal-conveyor was Mr. Akina employed?

A. On the coal-conveyor, on the whole coal-conveyor. He would have to be all around, he was running the coal-conveyor part.

Q. Under whose orders were the men who were

(Testimony of George E. Ward.)

engaged on top of the coal-conveyor?

A. Through Mr. Gedge.

Q. And as I understand you—and under whose orders was Akina working?

A. Under Mr. Gedge.

Q. And under whose orders were you working?

A. Under Mr. Gedge.

Q. At the time when the coal boats came in to discharge coal what did Mr. Gedge do, if anything, around the coal-conveyor, what orders did he give?

A. He principally give all orders.

Q. And to whom would he give the orders?

A. If there was anything concerning the boats, the ship, he would come and give me those orders, if it was up on top he would see Akina and he would give Akina the orders, how to place the cars and the men **[159—92]** to have them work quick, he was ordering all the time, all day, all the time he was there.

Q. Speak a little more slowly?

A. He would give all orders.

Q. Will you describe the method in which the coal-conveyor was operated when you were employed by the Inter-Island Steam Navigation Company? A. The whole coal-conveyor?

Q. Yes.

A. The ship would be laying along side of the wharf under these towers.

Q. Which side of the wharf?

A. On the Waikiki side of the wharf, and the coal is hoisted by these towers, the bucket comes down

and grabs coal up.

Q. Where?

A. In the ship's hold, raises that coal up then the bucket and coal and all then runs unto the hopper, opens and dumps the coal into the hopper and the bucket returns back again for more coal. This is the hopper.

Q. What is the carrying capacity of those buckets? A. One ton of coal.

Q. And what is the weight of the bucket?

A. About one ton.

Q. Now, that the coal is taken that operation is continued Mr. Ward, until the vessel is discharged of coal, is it? A. Yes, sir.

Q. Now, while the coal is being hoisted in the buckets and discharged in the hoppers where did your employment call you to go, where did it leave you to go, where did you go, where were you?

A. Why, I would be on board of the ship until they would call me up there, I would have to go up and see what they want.

Q. Yes, and where were you? You were on board the ship, what particular portion of the ship would you be on?

A. I would be on the deck, the ship's deck and sometimes down in the hold.

Q. Sometimes in the hold?

A. Yes. **[160—93]**

Q. I will ask you whether or not—whether you would be obliged at any time to superintend any considerable portion of the time in the hold of the

(Testimony of George E. Ward.)

ship? A. Yes, I would.

Q. Now, when the coal is dumped into the hoppers after being taken from the hold of the ship, what is the capacity of these hoppers, what was their capacity, how many tons would they hold?

A. About twenty-five tons full.

Q. Now, with respect to this model where was the hopper in which—with respect to the makai tower where was the hopper?

A. Right in this opening here.

Mr. STANLEY.—That is the opening on the Ewa side just below—on the Waikiki side just below the boom?

Mr. DOUTHITT.—That is the boom, is it not?

A. Yes, sir.

Q. Now, as I understand, Mr. Ward, the hopper was in the same position on the makai tower as it was in the mauka tower? A. Yes, sir.

Q. And how many tons did the hopper in the mauka tower hold? A. About twenty-five tons.

Q. The same amount as in the makai tower?

A. Yes.

Q. Now, how many cars were there in operation on the coal-conveyor at the time that you were employed at the Inter-Island Steam Navigation Company? A. Twenty cars, sir.

Q. What was the carrying capacity, how many tons of coal did these cars hold when loaded with coal? A. Two tons.

Q. And what was the weight of the car if you know? A. One ton.

(Testimony of George E. Ward.)

Q. Then, as I take it, a car loaded with coal would weigh about three tons? A. Yes, sir.

Q. What was the length of the cable which ran around the coal-conveyor?

A. Twenty-eight hundred feet.

Q. What kind of a cable was that?

A. Nineteen wire six strand, three quarter inch diameter wire. **[161—94]**

Q. You have said, Mr. Ward, that it was a nineteen wire, six strand cable? A. Yes, sir.

Q. Now, what do you mean by the wires, what is the strand with reference to this sample, with reference to this piece of cable (showing piece of cable to witness)?

A. One of these. There is one, two, three, four, five, six.

Q. Then, as I take it, in each one of these six strands which there are or there were nineteen wires? A. Yes, sir.

Q. What were these wires made of? A. Steel.

Q. They call this a six strand, nineteen wire, three quarter inch cable, do they?

A. Yes, sir, nineteen wire strand, three quarter inch diameter. May I say anything about that cable?

Q. Yes.

A. Why do they bring in a cable like that which is entirely different?

Mr. DOUTHITT.—The point is this, Mr. Ward, this is only used for the purpose of illustration, this is not supposed to be a piece of cable by which you

(Testimony of George E. Ward.)

were hurt, it is not identified as that. This is a piece of wire similar to that with regard to strands and number of wires.

Mr. STANLEY.—Similar as regards to make.

Mr. DOUTHITT.—And in the inside the center of this cable was what? A. The core.

Q. Composed of what? A. Hemp.

Q. The cars being then loaded with coal would be taken where from this tower, from the makai tower we will say?

A. That would be taken along in a mauka direction.

Q. On what track?

A. On the Waikiki track.

Q. Until it gets to this tower and if there are many cars under this tower that car is stopped?

A. The grip is released.

Q. That is to say if there are any cars under the makai tower the car is stopped and the grip is released. Now, when the car has proceeded on its way where is it stopped first?

A. Proceeding **[162—95]** on its way it stops at the scale.

Q. And what is the purpose of having the cars stop at the scale? A. They have to be weighed.

Q. Then what takes place at the scale after the car is weighed?

A. When the car arrives at the scale the hauling cable is taken out of the grip when the car is weighed.

Q. Yes.

(Testimony of George E. Ward.)

A. After the car is weighed then the tail-rope is put into the grip and then it proceeds to the coal-yard and is dumped.

Q. By what means is the car dumped in the coal-yard? By what means is the car dumped?

A. By a dumping block.

Q. Is there any physical or any—are there any men required to dump cars?

A. No, sir, not to dump the cars.

Q. As I understand it they are automatically dumped by a device which is in the track?

A. Yes, sir.

Q. After being dumped,—after the coal is dumped from the loaded car where does it then go?

A. Then it goes on the Ewa track.

Q. Proceeding around what?

A. Proceeding around the curves and the coal-yard then goes along until it reaches this section of the coal-conveyor, then goes out the Ewa track until it is a little this way of that makai tower.

Q. Until it reaches a point about how many feet to the mauka of the makai tower?

A. Why, about five or six feet this way mauka of the center of the tower.

Q. Well, is it under the tower or outside the tower?

A. Well, it may stop sometimes a little bit under the tower, sometimes they are a little bit back from the tower, sometimes they are fifteen or twenty feet away from the tower.

(Testimony of George E. Ward.)

Q. What is the purpose of keeping them there at that point?

A. The grip is released from the cable and then they remain there until the car is needed on the Waikiki side for the purpose **[163—96]** of loading.

Q. By Waikiki side you mean the opposite track?

A. The opposite track.

Q. Now, when the cars return from their position —from the coal-yard after passing around the coal-yard to the conveyor in what condition do those cars return in the Ewa side of the—that is the Ewa track? A. They are empty.

Q. What construction—how are those cars built or made; explain the mechanical construction of the car, the inside of the car we will say?

A. The inside of the car, the inside, this other part is built like that, an angle, on an angle so as the coal will slide out. These doors have hinges on the top part of the door and they close to this section; when they open that way the coal all slides out.

Q. What is there on the—the inside is built something like a cone-shape, is it?

A. Something like a cone-shape, yes.

Q. On the sides of the cone leading to the top of the cone what is there, if anything, or what was there, if anything?

The COURT.—What character of material is there?

Mr. DOUTHITT.—What character of material is there?

(Testimony of George E. Ward.)

A. The cars are built of wood and lined with sheet iron.

Q. With respect to the sides of the cone leading down to the sides of the car, what was the side constructed of, the sides of the cone, the material inside? A. Wood and sheet iron.

Q. Was the wood over the sheet iron?

A. No, the sheet iron covers the wood.

Q. And what covers the top of the cone or roof of the cone, if anything?

A. Nothing. Covers the cone part, you mean? The top of the car is open.

Q. The top of the cars is open, I understand you, but we have no car as I illustrated here?

A. Yes. **[164—97]**

Q. What I mean by the top of this cone is what covers this top portion. You have said the sheet iron covers the sides, what covers the top?

A. Angle iron.

Q. What kind of iron? A. Angle iron.

Q. Now, Mr. Ward, you have called a certain—you have designated a certain cable on the model as the hauling cable? A. Yes, sir.

Q. Now, in which direction does the engine run or did the engine run at the time you were working on that coal-conveyor?

A. Are you speaking now of the engine or the drum?

Q. The engine, of course—the drum?

A. As I stand on this side it runs towards the right hand?

(Testimony of George E. Ward.)

Q. Runs towards the right? A. Yes, sir.

Q. Then, that would move the cable in which direction?

A. By this drum revolving to the right it pulls on this cable, that is the hauling cable, that pulls the hauling cable in a mauka direction as far as this sheave.

Q. In other words the drum revolving towards the right draws the cable or the course of the cable is from makai to mauka? A. Yes.

Q. On which track?

A. On this Waikiki track.

Q. And then when it gets to a position around the circular head at the coal-yard end of the coal-conveyor the cable is going in which direction?

A. On the Ewa track.

Q. On the Ewa track?

A. That would be the same track as this is that would be going more towards Waikiki the cars on this track would be going.

Q. I mean after it rounds the curve?

A. Then it would be going back on the other track.

Q. It would be coming back in the opposite direction of the cable moving on the Waikiki track, is that correct? A. Yes.

The COURT.—In other words it runs round and round? A. Yes, **[165—98]** sir.

Q. It is a continuous cable?

A. It is a continuous cable, an endless cable.

Mr. DOUTHITT.—An endless rope. Now, Mr.

(Testimony of George E. Ward.)

Ward, you say that the hauling cable,—I am referring now to the Waikiki cable—generally runs down to the point marked B on the floor of the conveyor then it goes around what? A. A sheave.

Q. What is the size of that sheave, do you know what the diameter of it is?

A. Between thirty and thirty-six inches in diameter.

Q. Then after passing through the sheave where does it go? A. It goes over the drum.

Q. How many times, if any, is it wound around the drum? A. Four times.

Q. What is the purpose of winding the cable, if any, around the drum?

A. For the purpose of keeping it on the drum and hauling the cable.

Q. It gives it the purchase, don't it?

A. It gives it the purchase.

Q. After passing around the drum, Mr. Ward, where does the cable go?

A. Then it leaves the drum through this sheave above.

Q. Yes?

A. Goes around that sheave down to the sheave in the box from the sheave in the box to another sheave makai about here.

Q. Now, what is the size of those two sheaves immediately above the sheave at the box, at the weight, what diameter?

A. About the same, about between thirty and thirty-six inches.

(Testimony of George E. Ward.)

Q. By sheave do you mean pulley?

The COURT.—A grooved wheel, pulley wheel.

Mr. DOUTHITT.—Then after passing around the drum and up through the sheaves at the box, the weight, and then passing **[166—99]** through the wheel at the makai end it then comes up onto the main track, on the Waikiki track, and pursues its way around the coal-conveyor, does it not?

A. Yes, sir.

Q. Now, you have designated a certain portion of the cable as being the hauling cable and another part of the cable as the tail rope? The jury is not familiar with what you mean or don't understand what you mean. Will you kindly explain what you mean in mechanical parlance or your language that you use with reference to the coal-conveyor, what you mean by the coal-conveyor and the tail rope?

Mr. STANLEY.—I object to this on the ground that it was gone into thoroughly when Mr. Ward was called as a witness in the case.

The COURT.—I think so.

Mr. DOUTHITT.—Do you know what that weight is, what it weighs at the box, that box?

A. Box and all about five hundred pounds.

Q. What?

A. About five hundred pounds.

Mr. DOUTHITT.—Now, I observe on the model that there is a little chain which is connected with the box and a sort of any eye at the bottom of the coal-conveyor. What is the purpose of the chain?

A. The purpose of that chain there is to prevent

that box from going so high that it will go to the blocks, what we call two blocks, it would break the sheaves if that chain was not there. To prevent it knocking up above.

Q. That is to say it would prevent the box from bumping up against the sheaves that were on top there and breaking them? A. Yes.

Q. That had a tendency to hold the box down, did it? A. It prevented it from hitting the sheaves.

Q. Was it for the purpose of holding the box down so that it would not hit the sheaves?

A. For the purpose of keeping **[167—100]** the sheaves from hitting.

The COURT.—As a matter of fact the chain is there for the purpose of preventing the box from raising more than the length of the chain?

A. Yes.

Mr. DOUTHITT.—Now, what does this box do while the cars are in operation and the coal is being conveyed along the coal-conveyor, what is the motion of the box if anything? A. The motion?

Q. What does the box do?

A. It rises and lowers, rises and lowers, keeps raising and lowering, raising and lowering.

Q. What is the cause of the raising and lowering?

A. And it will lower a little, six inches or so whenever they are towing cars on this cable. The grip catching the cable that is to start that car and the stopping the car it kind of holds the cable back again and you will see the box will be doing the same thing raising and lowering.

(Testimony of George E. Ward.)

Q. It is due then to the gripping of the cars on the tail rope? A. That you see it moving—

Q. Up and down? A. Yes, six or eight inches.

Q. Do you mean loaded or unloaded cars?

A. Loaded cars.

Q. What salary or wages were you earning while employed by the Inter-Island Steam Navigation Company, the defendant in this case?

A. What is that again, please?

Q. What were your wages or salary?

A. What was the wages or average wages, do you ask me?

Q. Average wage?

A. About one hundred and fifty.

Q. One hundred and fifty what? A. Dollars.

Q. Per what?

The COURT.—Per month?

A. Per month, yes.

Mr. DOUTHITT.—Did you have any other source of income except your wages as a machinist?

A. No, sir.

Q. Have you any source of income now aside?

A. No, sir.

Objected to as incompetent, irrelevant and immaterial and [168—101] motion to strike the answer.

Motion denied. Objection overruled. Exception.

Mr. DOUTHITT.—All I want to show is that this man had was his salary.

Q. Now, Mr. Ward, did you have occasion to observe the condition of the cable which was used on the coal-conveyor on the day prior to the day when you

(Testimony of George E. Ward.)

were hurt? A. Yes, sir.

The further hearing of this case was continued until to-morrow morning at 8:30 o'clock. [169—102]

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

January Term, A. D. 1914.

GEORGE E. WARD,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY.

June 1st, 1914.

Direct examination of GEORGE E. WARD, resumed.

Mr. DOUTHITT.—About how long prior to the time you were injured did you first have occasion to observe the condition of the cable?

A. The time that the new drum was placed in.

Q. Do you know how long before your injury that was?

A. Three weeks or a month I am not sure of that.

Q. How did your attention happen to be called, under what circumstances—was your attention called to the condition of the cable on that occasion?

A. Why, I was taken down to replace the drum and looking at the cable and looking at the drum.

Q. Who took you down? A. Mr. Gedge.

Q. Where were you working at the time you received the communication from Mr. Gedge?

(Testimony of George E. Ward.)

A. At the Inter-Island shop.

Q. Who telephoned you if any one?

A. I think, Mr. Gedge.

Mr. STANLEY.—That is objected to; there is no evidence that there was any telephone.

Objection sustained.

Mr. DOUTHITT.—Was it a telephone?

A. Mr. Gedge came up there and took me in the automobile and took me down there. **[170—103]**

Q. What did you do when you got to the coal-conveyor?

A. When I got there Akina was standing there by the place and I looked at the cable and weight there and drum.

Q. Then what was said or done, if anything?

A. I told Mr. Gedge to put in a new cable and put in a new drum.

Q. Why did you tell him to put in a new cable?

A. Because I noticed the condition of the cable.

Q. What was that condition?

A. It was worn and starting cracking, the wires were starting breaking.

Q. What did you say to Mr. Gedge and what did Mr. Gedge say to you on that occasion?

A. I said Mr. Gedge for to put in a new cable and a new drum and he told me to never mind the cable to put in a new drum.

Q. And who was present at that time?

A. James Akina.

Q. In pursuance of that conversation what did you do with reference to the drum?

(Testimony of George E. Ward.)

A. Why, Akina went and got his men and then we took the—where it goes around the drum four times we loosened that, pulled it over the drum so as to get the drum out and then we placed the drum and put the four ropes back again, that was all. And then I went back to the shop.

Q. Where was the new drum made?

A. I think the drum was made in New York.

Q. And where was the drum obtained from?

A. In the engine-room, it is always laid to one side, a spare drum.

Q. Besides Akina and yourself who assisted in putting in the drum, if anyone?

Objected to as irrelevant, incompetent and immaterial.

Objection sustained.

Mr. DOUTHITT.—After you had replaced the drum where did you go?

A. Back to the Inter-Island machine-shop.

Q. When was the next time that you visited the coal-conveyor?

A. When that ship came in, the coal boat. [171—104]

Q. How long after the new drum was put in?

A. About a month.

Q. Did you have occasion to go down to the coal-conveyor between the time when the new drum was put in up to the time the first coal ship came in?

A. No, sir.

Q. During that interim where were you employed, if anywhere?

(Testimony of George E. Ward.)

A. I was employed on the steamer "Mauna Loa," she was laid up for repair work and I was working most of the time on board her and back to the shops.

Q. Now, how long did it take to discharge the first coal boat that came in prior to your accident?

A. About five days and a half.

Q. And where were you employed during those five days and a half on the coal-conveyor?

A. On the coal boat down in the hold.

Q. Doing what, Mr. Ward?

A. Seeing that the men shoveled back the coal so that the bucket could get out.

Q. Where was Akina employed?

A. On the coal-conveyor up above.

Q. With reference to the coal-conveyor what position did Akina hold?

A. Foreman on the top of the coal-conveyor.

Q. What position did you hold? A. Foreman.

Q. Under who? A. Under Mr. Gedge.

Q. Who gave you your orders, if anyone?

A. Mr. Gedge.

Q. What was the general character of those orders that you received from Mr. Gedge?

A. Why, everything about the coal-conveyor.

Q. What?

A. Anything around the coal-conveyor we would receive orders from him.

Q. At the time when the coal boat was in and was being discharged from coal, Mr. Ward, where was Mr. Gedge with reference to the coal-conveyor?

(Testimony of George E. Ward.)

A. Why he would come down in the morning. [172—105]

Q. What time? A. About a quarter to seven.

Q. Yes.

A. And then seven o'clock the whistle would blow, all the men going aboard the ship he would check there—call their names out; as he called them out they would go up the gang-plank on board the coal boat.

Q. The coal boat? A. Yes, sir.

Q. Go ahead.

A. After that all the men whose name is on the book if there is any extra wanted why then he would pick out some other men and put them aboard the ship. After those men would go up the gang-plank then I would have to follow and place them in one hold or the other.

Q. After that was done where did Mr. Gedge go, if anywhere?

A. On top of the coal-conveyor.

Q. How long did he remain on the coal-conveyor during the day when coal boats were being discharged?

A. Sometimes he would be down there two hours, sometimes two hours and a half, sometimes it would be ten o'clock before he would go back to the office.

Q. Ten o'clock in the morning?

A. In the morning.

Q. Then when did he return?

A. Twelve o'clock, somewhere around twelve o'clock.

(Testimony of George E. Ward.)

Q. And at that time what did he do, if anything?

A. Why he would check these men as they were coming off the ship on his time-book.

Q. After the men had been checked off what did he do? A. He would go for his lunch.

Q. And return to the coal-conveyor at what time?

A. A little before one o'clock.

Q. After returning, what did he do, if anything?

A. He would go to the gang-plank again and call the names out again and they would go aboard the ship.

Q. And after taking the time of the men at the noon hour what [173—106] did he do, if anything?

A. Sometimes he would come aboard the ship and look down in the hold. After he had got through on board the ship he would go up on board the coal-conveyor again.

Q. And what time did he return to the coal-conveyor after the noon hour?

A. Near quitting time.

Q. What time was that?

A. Five o'clock in the week days.

Q. And what time on Saturdays?

A. Four o'clock on Saturdays.

Q. And what did he do at quitting time?

A. Check them men again and some of the men would ask him for a half a dollar or a dollar and he would give it to them and put it in his time-book too.

Q. Mr. Ward, while you were employed by the Inter-Island Company, the defendant in this case,

(Testimony of George E. Ward.)

I will ask you whether you had anything to do with the cable or the installation of cables? A. No, sir.

Q. Do you know whether there was a man employed by the Inter-Island Company for that purpose? A. Yes, sir.

Q. Who was that man? A. Mr. Williamson.

Q. And during all this time, Mr. Ward, do you know the position that Mr. Gedge occupied in the Inter-Island Steam Navigation Company?

A. Why, he was secretary and treasurer of the company, but he had charge of the conveyor also.

Q. You heard the statement made that you were the chief superintend*ing* of the coal-conveyor did you?

A. I have never been superintendent of the Inter-Island Company.

Mr. STANLEY.—I move that that be stricken out as not responsive.

The COURT.—It is so ordered.

Mr. DOUTHITT.—You have heard the statement made that you were the chief superintendent of the coal-conveyor, Mr. Ward? **[174—107]**

A. By the witnesses?

Q. Yes, by Mr. Akina?

A. Yes, I heard him say that.

Q. I will ask you whether you ever occupied the position of chief superintendent of the coal-conveyor for the Inter-Island Steam Navigation Company?

A. No, sir.

Q. Who was that chief superintendent, if anyone?

A. Why, Mr. Gedge was after the coal-conveyor

(Testimony of George E. Ward.)

was running but before *the* Mr. Johnson was superintendent of construction.

Q. What?

A. While the thing was being erected Mr. Johnson was superintendent.

Q. Mr. Johnson was the superintendent of construction was he?

A. He was superintendent of construction, yes, sir. He was superintending engineer of the Inter-Island Steam Navigation Company.

Q. And after the coal-conveyor was running—

A. Yes.

Q. —who was the superintendent of the coal-conveyor, if anyone? A. Mr. Gedge.

Q. Then Mr. Johnson, as I understand you, was the superintendent of construction? A. Yes, sir.

Q. And he was also the chief engineer of the Inter-Island Steam Navigation Company? A. Yes, sir.

Q. It has been testified here, Mr. Ward, that you made all of the repairs on the coal-conveyor, is that correct? A. No, sir.

Q. With regard to repairs, how did those repairs come to be made?

A. If there was any repairs Akina would make repairs on the coal-conveyor unless I was sent for and then I would have to go down there.

Q. Repairs with respect to what portion of the coal-conveyor?

A. Why the cars and such as that that run on the coal-conveyor.

Q. And what else besides cars?

(Testimony of George E. Ward.)

A. Why if one of the engines happened to get a little out of order why they would send up [175—108] to the Inter-Island shops after me.

Q. Who would send?

A. Mr. Gedge would notify Mr. Muirhead and I would go down.

Q. How about anything happening to the cable or the working of the cable?

A. Why that was up to Mr. Gedge or to Akina. Mr. Akina would tell him and then Mr. Gedge would give the orders.

Mr. STANLEY.—What is that?

A. I say that was up to Mr. Akina to report to Mr. Gedge, then Mr. Gedge would give the orders.

Mr. DOUTHITT.—Well, with reference to the cable who were the orders given to?

A. The main cable?

Q. Yes. A. Was given by Mr. Gedge.

Q. To who? A. And Akina.

Q. But who repaired the cable if it was necessary to repair it? A. Why Mr. Williamson.

Q. How long were you working on the coal-conveyor as a foreman before you were hurt, immediately before I mean?

A. Why, I was foreman down there while coal ships were in.

Q. Now, how long had you been working at the coal-conveyor as foreman on the coal ship before you were injured. A. About seven or eight days.

Q. Did anything happen with reference to the cable on the Saturday prior to your accident?

(Testimony of George E. Ward.)

A. Yes, sir.

Q. When were you injured? A. On Monday.

Q. What day—what date and what month and what year? A. On the 8th day of July, 1912.

Q. Now, what happened to the cable, if anything, on the Saturday prior to the date of your injury?

A. The cable came off on that makai end.

Q. During your experience—during all of your experience, Mr. Ward, on the coal-conveyor I will ask you whether you have ever known on the cable to come off, the cable, at the makai end prior [176—109] to that time? A. No, sir.

Q. At what particular portion of the coal-conveyor were you employed at the time that the cable came off on the Saturday?

A. I was down the ship's hold.

Q. And what was it that called your attention to the fact of the cable being off?

A. Why I noticed that the bucket was not taking coal out of the hold and then I came out of the hold and I looked up to the tower. I was told that the hopper was full.

Q. What is that?

A. I was told that the hopper was full.

Mr. STANLEY.—I move that that be stricken out as hearsay.

The COURT.—It is so ordered.

Mr. DOUTHITT.—How many tons of coal will those hoppers hold?

A. Each hopper holds twenty-five tons about.

Q. And how many tons does the bucket hold

which takes the coal from the hold of the ship and dumps it into the hopper? A. One ton.

Q. What did you do after receiving this information? A. I went up to the coal-conveyor.

Q. What did you find there?

A. When I arrived about on the steps I noticed all the men down there so I walked down there. I went down there to see what was going on. When I got there they had got the cable on and the engine was running.

Q. They had the cable on and the engine was running. Do you know when that cable got off the pulleys of your own knowledge, Mr. Ward?

Objected to that the witness had already shown that he didn't know anything about it.

Mr. DOUTHITT.—What did you do after the cable was started running, if anything?

A. I stood there and watched it running for the purpose of seeing what did make it come off.

Q. And what did you observe at that time, if anything? [177—110]

A. I stood there watching on the pulleys and I noticed that that cable was climbing and falling, climbing and falling.

Q. Climbing and falling on what?

A. Onto the flange, climb up part of the pulley and drop down again, climb up part of the way of the pulley and drop down again.

Q. Did you ascertain what caused the rising or climbing on the pulleys?

A. Yes, I saw it was from the condition of the

(Testimony of George E. Ward.)

cable was the cause of it riding.

Q. What was the condition of the cable?

A. Why the wires were sticking out.

Q. Are you able to state, Mr. Ward, how far the wires were sticking out?

A. Why they were sticking out at all different lengths.

Q. What do you mean by the cable sticking out—the wires sticking out?

A. Why they were sticking out from the main cable.

Q. And what caused that, if you know?

A. Why the wires had broke and the wires would spring out.

Q. How far—you say they were sticking out at different lengths; what do you mean by that, Mr. Ward?

A. Why there was some short *one* and there were some long ones.

Q. That does not convey any impression to my mind, Mr. Ward.

A. Why say from a quarter of an inch up as far as an inch.

Q. What was the condition of the entire cable as you observed it at that time?

A. It was in that condition all the way along the cable.

Q. How long is the cable or was the cable?

A. Twenty-eight hundred feet.

Q. And what kind of a cable was used on the coal-conveyor at that time?

(Testimony of George E. Ward.)

A. Nineteen wires, six strands, three-quarter-inch diameter cable, right-handed cable.

Q. A right-handed cable?

A. A right-handed cable. [178—111]

Q. After observing the condition of the cable on the Saturday prior to the accident, Mr. Ward, did you have any conversation with reference to the cable with Mr. Gedge? A. I did.

Q. Do you remember where on the coal-conveyor that the conversation took place?

A. On board of the ship.

Q. Do you mean on board of the coal-ship that was being unloaded at that time? A. Yes, sir.

Q. Now, will you please tell the jury what that conversation was?

A. When Mr. Gedge came down he came aboard the ship and I told him that that cable came off and the cause of it coming off and I told him they would have to have a new cable and he said all right we will put a new cable in.

Q. Now, just a moment, what did you tell him—you say that you told him the cause of the cable coming off; what did you tell him exactly if you remember?

A. That it was riding the pulleys on account of the bad condition of the cable.

Q. And what did he say to that, if anything?

A. He said all right he would put in a new cable.

Q. What reliance did you place upon his promise, if any, that he would put in a new cable?

A. Why he told me that he would put in a new

(Testimony of George E. Ward.)

cable and I relied on that that he would put in a new cable.

Q. What effect, if any, did the promise of Mr. Gedge have upon you?

A. Why I relied that he would put that cable in the next day and that the cable would be a new cable on Monday.

Q. Why did you continue in your employment on the coal-conveyor?

A. Because I relied upon the new cable being put in.

Q. Do you remember what time of day that conversation took place with Mr. Gedge?

A. Around about the noon hour sometime. [179—112]

Q. After the conversation with Mr. Gedge, where did Mr. Gedge go, if anywhere?

A. Why, he went up on the coal-conveyor, I think.

Mr. STANLEY.—What is that?

A. I think he went up on the coal-conveyor.

Mr. DOUTHITT.—What time did you quit work on that Saturday? A. Four o'clock.

Q. In the afternoon?

A. In the afternoon, yes, sir.

Q. Do you know whether there was a new cable at that time available for use by the Inter-Island Steam Navigation Company? A. Yes, sir.

Q. And where was that cable kept?

A. Right in front of the engine-room.

Q. At the coal-conveyor?

A. At the coal-conveyor, yes, sir.

(Testimony of George E. Ward.)

Q. How did the new cable compare in size with the old cable which was being used?

Objected to as incompetent, irrelevant and immaterial and having no bearing upon the issues in this case.

Mr. DOUTHITT.—We want to show that there was an identically similar cable, a brand new cable, a nineteen wire, six strand, right-hand cable there.

Mr. STANLEY.—We admit that.

Mr. DOUTHITT.—You admit that?

Mr. STANLEY.—Yes.

Mr. DOUTHITT.—And available for use at the coal-conveyor of the Inter-Island Steam Navigation Company?

Mr. STANLEY.—That is admitted.

Mr. DOUTHITT.—What time did you go to work on the Monday morning following?

A. I got down there about a quarter to seven.

Q. And where did you go?

A. I went down here by where [180—113] the men were going aboard the ship.

Q. And where was Mr. Gedge when you got to work that morning?

A. He was there on the wharf too.

Q. Taking the time?

A. Waiting for to take the time when the men went aboard the ship, call their names out every one of them.

Q. Now, after the time of the men had been taken where did you work on the coal-conveyor?

A. On board the ship.

(Testimony of George E. Ward.)

Q. Did anything happen on that day?

A. On Monday why the cable came off on the makai end again.

Q. How was your attention first directed to that fact? A. I was called up there.

Q. Where was Mr. Akina at that time, if you know?

A. Mr. Akina was there in the coal-yard.

Q. You know that, do you, of your own knowledge?

A. Yes, sir, he was not there when I got there and they told me he was over in the coal-yard.

Mr. STANLEY.—I move that that be stricken out as hearsay.

The COURT.—It is so ordered.

Mr. DOUTHITT.—You had no knowledge of Mr. Akina's whereabouts at the time? A. Yes.

Q. Your own knowledge, except what was told you? A. Why no, he was not there.

Q. You know that he was not on the makai end of the coal-conveyor?

A. He was not at the makai end.

Q. Or he was not at the scale-house?

Objected to as leading.

Q. Was he at the scale-house?

Objected to as leading.

A. No, sir.

Mr. STANLEY.—I move that it be stricken.

Mr. DOUTHITT.—I withdraw it.

The COURT.—The answer is stricken out. [181—114]

(Testimony of George E. Ward.)

Mr. DOUTHITT.—With reference to the scale-house where was he?

A. He was over in the coal-yard.

Mr. STANLEY.—I move that that be stricken.

The COURT.—It is so ordered.

Mr. DOUTHITT.—With respect to the scale-house where was he?

A. The scale, the coal-scale?

Q. Yes.

A. Conveyor scale the coal-scales are right here as marked on this model.

Q. With respect to the scale-house, Mr. Ward, where was Akina?

Mr. STANLEY.—If you know?

Mr. DOUTHITT.—If you know?

A. He was over in the coal-yard.

Mr. STANLEY.—He was over in the coal-yard. I move that that be stricken.

The COURT.—It is so ordered.

Mr. DOUTHITT.—Was he or was he not at the scale-house?

A. No, sir.

Q. Now, when you got up there on the coal-conveyor what did you observe?

A. When I got up on the coal-scale the man told me that the cable was off. I went down there. The engine was stopped and I went down there and saw the way the cable was off.

Q. Who stopped the engine?

A. Mr. Jimmie Akina.

Mr. STANLEY.—Little Jimmie Akina?

(Testimony of George E. Ward.)

A. Yes, sir, a son of the man who was a witness here.

Mr. DOUTHITT.—Who gave the order to Jimmie to stop the engine, if anyone?

A. What is that?

Q. Who gave the order to Jimmie to stop the engine?

A. Why, I think I did, I gave him that order when I found out about it. I told him to stop the engine.

Q. After the engine was stopped where did you go —after the engine was stopped where did you go?

A. I went down to [182—115] the makai end.

Q. What did you find—in what condition did you find the cable upon arriving there?

A. The condition of the strands were all sticking out.

Q. Yes.

A. And the cable was off four of the pulleys.

Q. Now, are you able to show the jury the condition of the cable as you observed it on the morning you were injured? A. Yes, sir.

(The witness illustrates with model.)

Mr. STANLEY.—Let that go on the record.

Mr. DOUTHITT.—Of the mauka four pulleys of the series of eight on the Ewa side.

Mr. STANLEY.—Yes.

Mr. DOUTHITT.—Observing that the cable was off the pulleys in that position what did you do, if anything, Mr. Ward?

A. I ordered them to get the crowbars.

Q. Why did you order them to get the crowbars?

(Testimony of George E. Ward.)

A. Why, we always had crowbars for putting them on when they were off four pulleys, three or four pulleys.

Mr. STANLEY.—I move that be stricken as incompetent, irrelevant and immaterial.

The COURT.—The motion is granted.

Mr. DOUTHITT.—Exception.

Q. What did you do when you observed the cable off the four pulleys?

A. We got the crowbars and was putting it on.

Q. By putting it on what do you mean?

A. Why putting it back in its proper place.

Q. In the meantime I will ask you whether work was suspended on the coal-conveyor during the act while it was necessary to put that back?

A. Why, just the running of the cars was stopped. [183—116]

The COURT.—The cable was also stopped and not running?

A. Yes, the cable was stopped.

Mr. DOUTHITT.—In putting it on was there any slack at the makai end?

A. Yes, sir.

Q. How much slack was there?

A. There was sufficient slack to put it back.

Q. Now, where were you standing?

A. Right here (indicating.) I was at the makai end of the conveyor about here.

Mr. DOUTHITT.—We will put the mark X there.

Mr. STANLEY.—It is on the plank, is it not, be-

(Testimony of George E. Ward.)

low the ties on the Ewa side of the track?

Mr. DOUTHITT.—We will mark it X.

Mr. STANLEY.—The mark X being placed on the planks below the ties on the Ewa side of the conveyor.

Mr. DOUTHITT.—Where was your left foot, if anywhere? A. On the ties.

Q. Now, can you illustrate by means of your crutch how you were endeavoring to put it back?

A. I will have to sit down.

Q. Sit down, Mr. Ward.

A. That way (indicating with crutch).

Q. And pulling in which direction?

A. In this direction.

Q. Towards you? A. Yes, sir.

Q. What happened, if anything, as you were attempting to replace that cable to its position around the pulleys?

A. Why, I was hurled to the wharf.

Q. Well, do you know what the cable did, if anything?

A. I don't know. I was hurt; I had no chance to look back. I was hurled from the wharf. I was looking for something to get hold of.

Q. What?

A. I was looking for something to protect myself to get hold of.

Q. Was there any platform or rail at that particular point on that occasion?

A. No, sir. [184—117]

Mr. STANLEY.—I object to that; it has already

been testified to by the witness.

The COURT.—Objection sustained.

Mr. DOUTHITT.—Now, Mr. Ward, I want you to explain how you got the cable up on the pulleys; illustrate by means of this model?

(Witness illustrates with model.)

Mr. STANLEY.—Showing the cable lying on top of the four mauka pulleys.

Mr. DOUTHITT.—How much slack, if you know, was there necessary to get that cable to its proper position around the pulleys at the time when you were injured?

A. About three inches.

Mr. STANLEY.—Three inches?

A. About three inches to get there of slack, I had to get that cable over three inches.

Mr. DOUTHITT.—Can you explain what you mean by getting the cable over three inches, Mr. Ward?

A. The cable had to get from where it was standing on top of the pulleys, had to come over this way just three inches to get over down into its proper place.

A JUROR.—Q. That would mean that the top of the pulleys was six inches?

A. No, that would mean from where the cable was placed on top of the pulleys it would be three inches to this side here.

Q. Three inches more from it?

A. Yes, to get it over I had to move the cable from where it stands three inches to get it down.

(Testimony of George E. Ward.)

Q. That is what I mean. The cable was on top and then you would have to go beyond that three inches in order for it to drop?

A. Yes, in order for it to drop.

Mr. DOUTHITT.—Who else were working with you at the time that you were thrown over?

A. Along with me?

Q. Yes. A. Nunu, Merseberg, Kalau, Kaina.

Q. You were putting it back with bars as I understand you? [185—118] A. Yes.

Q. Who had hold of the bar that you were using besides yourself? A. Nunu.

Q. At the time that you went over the head of that coal-conveyor what happened to the bar?

A. The bar went with me.

Q. Do you know the height from the wharf at that makai end? A. About twenty-five feet.

Q. Mr. Ward, what was the general condition of the cable while you were working there with regard to the slack in the cable—with regard to whether there was any slack in the cable?

Mr. STANLEY.—Do you mean when in operation, Mr. Douthitt?

Mr. DOUTHITT.—When in operation, yes.

A. While in operation?

Q. Yes.

A. There is slack in the cable while it is running between cars, there is slack.

Q. And elsewhere?

A. All along the whole conveyor it sags between

(Testimony of George E. Ward.)

the dollies, what I mean by sags, it sags down, there is a sag to it.

The COURT.—Between the dollies or the rollers, the roller in the center of the track?

A. Place in the center of the track all along.

Mr. DOUTHITT.—It has been testified here that on the morning prior to the accident that the weight of the box was lifted, why didn't you raise the box at the makai end on Monday when you were injured?

A. It was unnecessary to raise the box.

Q. Will you please explain to the jury why it was unnecessary?

A. Why, on this makai end of the coal-conveyor you will always get slack from the momentum of the cars and the cable and this cable was in the position as I have showed you and being in that V shape it gives you slack itself as you get it over. A cable going this way, that way and that way whilst on the radius of twelve feet after going around has sufficient slack of itself the same as if you straighten out the letter V, it is longer and the [186—119] cars, the momentum of cars always give slack at this end. When you stop the engine the cars don't stop instantly, they continue on and gradually dies off. That gives you slack on this end because this end is ahead of all the cars in motion and at the head of the car is where you get the slack.

Q. Assume that a great deal of slack were required at this makai end how could you get the slack to that portion?

A. If there was not sufficient slack, why then you

(Testimony of George E. Ward.)

would go and raise the box.

Q. Not sufficient slack where? A. Out here.

Q. Out where, at the makai end?

A. At the makai end.

Q. Then you would go and raise the box?

A. You would go and raise the box up, you would get the slack on the top of the platform but you would drop that slack, you would walk two hundred feet and you would pull the slack to there and then you would walk two hundred feet here and get that slack there and you would go all over around the whole conveyor that way two hundred feet of cable and pull it along and you would continue on that way until you got it to the makai end. The grips of all the cars would have to be released and you would have to get that cable all the way around because the most you can pull on the cable is two hundred feet of cable because it weighs—

Q. What is that?

A. Two hundred feet is all you can take and pull it and let it rest, walk on, and pull it two hundred feet and pull it until you get it there, and you do that until you get it to the makai end.

Q. How long would an operation of that kind take, Mr. Ward? A. After you have stopped the cars?

Q. Yes, the whole thing.

A. It will take about two hours.

Q. Do you know whether there is any slack at the scale-house or at the place where the cars are detached from the hauling cable to be attached to the tail rope?

(Testimony of George E. Ward.)

A. There is slack enough [187—120] there when the boys keeps lifting, taking one cable out and replacing the other cable in the grip, there is that slack there.

Q. With what does he take it out?

A. With a hay hook.

Q. And do you know how far that cable is capable of being raised at that point?

A. You can raise that as high as you want, the highest I have ever seen it done was about, maybe, two or three feet, the boy takes that very stand right before everybody's eyes. If you pass me them two ropes I will explain it to you. The two ropes being so close together sometimes I got like that, and when the boy sees that condition and he takes hold of one rope and pulls it away up here and shakes it off to untangle that rope. That happens I don't know how many times a day in throwing one rope and then throwing the other rope. They get one around the other and then he to untangle it he picks it up and stands in position and he shakes it and that will shake that right out and drops it.

The COURT.—And this is done when the cable is in motion, Mr. Ward?

A. Yes, your Honor, while the cable is in motion.

Mr. STANLEY.—Is this little Jimmie Akina that you refer to?

A. Yes, that is Jimmie Akina, Jimmie Akina's son.

Mr. DOUTHITT.—You have testified, Mr. Ward, that you went up to the makai end of the coal-con-

(Testimony of George E. Ward.)

veyor on the Monday when you were hurt to replace the cable to its proper position around the pulleys?

A. Yes, sir.

Q. Whose duty was it to replace that cable in the event that it got off the pulleys?

A. It was Akina's place to replace the cable, but if he is not there I have to go up and do it. He is called around the coal-conveyor so much of the day and his attention is given to the whole coal-conveyor, from the coal-yard up to the wharf.

Mr. STANLEY.—I move that that be stricken out as not responsive. [188—121]

The COURT.—That portion may be stricken out with reference to his attention and so forth.

Mr. DOUTHITT.—Then, if I understand you, if Akina is not there it is up to you to replace the cable?

A. Yes, sir.

Q. Why was it that you complained to Mr. Gedge on the Saturday prior to the accident of the condition of the cable?

A. Because Saturday I went up there to see, the cable had been off and the cause of it coming off and I knew very well that Akina not being around I would have to go there and replace that cable.

Q. During your experience on the coal-conveyor, Mr. Ward, I will ask you whether a new cable, or a new cable which is in reasonably good condition will come off the pulleys at the makai end? A. No, sir.

Q. Why not?

A. Why, there is nothing will take it off from that makai end if the cable is in good condition, there is

(Testimony of George E. Ward.)

nothing to make it come off? There is nothing at all will raise the cable.

Q. Did you have occasion to observe the position of the cars on the day when you were injured?

A. I noticed the empty cars on the Ewa side.

Q. Where were these cars?

A. Mauka of the tower.

Q. Of what tower? A. The makai tower.

Q. Do you remember how far mauka of the makai tower the first cars was on the Ewa track?

A. I think it was some distance away from the tower.

Q. By that what do you mean, Mr. Ward?

A. Why, these empty cars are always stopped on this part of the conveyor, but then there may happen to be three or four or five cars there. When that car is sent around there it always leaves a vacancy [189—122] and if one or two cars are sent around there why, there would be still more space between the cars and the tower.

Mr. STANLEY.—I move the answer be stricken as not responsive.

Mr. DOUTHITT.—We consent to it.

The COURT.—It is so ordered.

Mr. DOUTHITT.—How far away from the makai tower was the first car on the Ewa track, to the best of your recollection, not exact, but approximately?

A. Maybe about ten feet away from the tower.

Q. Where did you next find yourself that Monday, the 8th day of July, 1912, after you fell, where did you next find yourself?

(Testimony of George E. Ward.)

A. I found myself in the Queen's Hospital.

Q. Do you remember what time of the day it was that you awoke to your surroundings? A. No, sir.

Q. What time of day was it that you were hurt?

A. Between nine and ten.

Q. Morning or afternoon?

A. Morning, in the morning, between nine and ten in the morning.

Q. Do you remember how you were hurled through the air? A. No, sir.

Q. After you awoke or came to your senses, Mr. Ward, did you have any occasion to observe the condition of your legs? A. Yes, sir.

Q. Which leg? A. This leg.

Q. Which leg do you mean? A. The right leg.

Q. What was the condition on the inside of the leg?

A. It was all black and blue and was scratched, there was scratches on it right in here.

Mr. STANLEY.—Indicating the inside of the leg above the knee.

A. Above the knee, yes, sir. [190—123]

Mr. DOUTHITT.—And how far along the inside of the leg did those scratches continue?

A. Continued about six inches somewhere around there, five or six inches.

Q. What was the condition of your testicles, if any? A. They were all swollen and black.

Q. How long did you remain in the Queen's Hospital? A. Over two months.

Q. And where have you lived since you came out of the hospital? A. At home on Kinau street.

(Testimony of George E. Ward.)

Q. Since the time of your accident, namely, on the 8th day of July, 1912, I will ask you whether you have done any work or labor? A. No, sir.

Q. I will ask you whether you have been able to do any work or labor since that time?

A. No, sir.

Q. Prior to this accident, Mr. Ward, what was the condition of your right leg?

A. It was in good condition.

Q. Was there anything wrong with it?

A. Nothing wrong at all.

Q. Prior to the accident what was the condition of your hearing and eyesight?

A. All very good, they were good, my sight and my hearing was always good.

Q. Prior to the accident what was the condition of your right arm? A. It was good.

Q. What was the condition of your back or spine?

A. It was all right, well and good.

Q. In other words, Mr. Ward, I will ask you whether you were perfectly sound physically prior to this accident? A. I was.

Q. Did you suffer any pain while you were in the hospital? A. I did.

Q. As the result of this injury? A. I did, sir.

Q. Can you explain to the jury the pain that you suffered? **[191—124]**

A. I could explain to them that I suffered something terrible, of pain, that I could not move. I had to lay there in one position all the time, I could not move this way or that way and I had just to stand

(Testimony of George E. Ward.)

and suffer that pain.

Q. And how long did the pain continue?

A. Oh, it continued all the time I was in the hospital, even continued after I was home.

Q. Where was that pain?

A. Right in here in the hip, all in there and the backbone.

Q. Indicating the right hip?

A. Yes, the right hip.

Q. Was there any pain in any other portion of your body except the right hip?

A. In my back. In my back here and pain in here.

Q. Indicating the right side?

A. The right side, yes, sir.

Q. In the region of the stomach?

The COURT.—In the groin? A. In the groin.

Q. Was it below the groin or in the groin?

A. Right up here by my ribs.

Q. What? A. Right up here (indicating).

Mr. DOUTHITT.—Between the groin and the lower ribs on the right side.

Q. Now, with regard to your head, Mr. Ward, what was the condition of that after the accident?

A. It pained terribly, terrible pains, headaches.

Q. And how long did this condition continue?

A. For a long time, even at home I had that.

Q. Do you remember how long after you were discharged from the hospital that you still continued to have the pain in the head?

(Testimony of George E. Ward.)

A. Oh, for months afterwards, I didn't count the time.

Q. Are you free from pain at the present time?

A. No, sir, [192—125] on my hip I still have the pain.

Q. How did you rest at night while in the hospital? A. Very poor.

Q. Were you given anything in order to induce sleep? A. Yes, sir.

Q. How do you rest at night now, Mr. Ward?

A. Why, I will rest, maybe sleep for two hours and then I am awake for the pain and I have got to shift over onto my left side and may be sleep two hours on that way and have to shift back again on my back and it is that way all night long.

Q. I will ask you whether you are able at the present time to sleep on your right side?

A. No, sir.

Q. Why? A. I cannot do it, the pain.

Q. The pain where?

A. In the hip, right in here.

Q. Under whose care were you since the time of your accident up to the present time?

A. Dr. Straub.

Q. After you left the hospital, Mr. Ward, did you undergo any medical treatment?

A. Yes, sir, Dr. Straub.

Q. And what was the nature of that treatment?

A. Liniments for rubbing on the hip and taking electricity in the chair he has at his office. My two feet would be in a porcelain pot like warm water

(Testimony of George E. Ward.)

and my two arms would be in two porcelain pots and then he would turn the current on.

Q. Now, how long after your accident did you continue to take those treatments?

A. About nine or ten months I think, maybe longer; I did not keep them up. Close onto a year.

Q. Close onto a year? A. Yes.

Q. Are you taking treatments at the present time?

Objected to as leading.

Objection overruled. Exception.

Q. Are you taking treatment at the present time?

A. No, **[193—126]** sir, not just at the present time, no more than his liniments I rub on the hip. I don't take electricity any more.

Q. What was the condition of your right hand and arm after the accident?

A. Why, I could not use this arm at all, hardly could pick it up for a long time afterwards.

Q. By a long time, Mr. Ward, what do you mean?

A. Over a year.

Q. Are you able to use it at the present time?

A. Not at anything that is heavy or anything, I cannot use it; I can move my fingers and I can lift it up now that is about all I can. I cannot do anything heavy or pull anything heavy; I have to use my left hand.

Q. After your accident what was the condition of your bladder, if you know?

A. Why, I would have to get up and urinate very often in the evening and at night and very often in

the daytime and that point that I spoke of in here was paining me after I was home for a long time.

Q. By the point that you speak of in here is the point in the right side? A. In the right side.

Q. With reference to blood what was the condition of your urine?

Q. Why, that was examined by Dr. Straub.

Q. Did you see it?

A. No, sir, I didn't see it.

Q. As a machinist, Mr. Ward, I will ask you whether it is necessary to have the free use of your arms and legs? A. Yes, sir.

Q. Have you the free use of the right arm and the right leg at the present time? A. No, sir.

Q. Are you able to follow your vocation as a machinist since this accident? A. No, sir.

Q. What is the condition of your hearing since the accident? A. It is poor.

Q. And in your business as a mechanic I will ask you whether or not it is necessary to have good hearing? A. Yes, sir. **[194—127]**

Q. What was the condition of your hearing before your accident? A. It was good.

Q. What is the condition of your eyesight at the present time? A. It is not good.

Q. Which eye? A. Why, this eye.

Q. By that eye, you mean what?

A. The right eye.

Q. Will you explain a little more in detail the present condition of your right eye?

A. Why, in reading I have to keep moving the

(Testimony of George E. Ward.)

paper or whatever I am reading, keep moving it all the time, it gets all blurred and that is only for a short length of time and then I have got to drop the book; no matter where I move it it starts blurring.

Q. Was that your condition prior to your accident? A. No.

Q. In your vocation as a machinist, Mr. Ward, I will ask you whether it is necessary to have good eyesight? A. It is.

Q. Mr. Ward, I will ask you whether you are able to use your right leg? A. No, sir.

Q. I will ask you whether you are able to walk on it?

A. Oh, not at all, I cannot put no pressure on it whatever.

Q. If you put any pressure on your right leg what is the result? A. Pain.

Q. Where? A. In the hip here, the right hip.

Q. By what means do you get around?

A. By two crutches.

Q. How much weight are you able to put on your right leg, Mr. Ward, without sustaining pain?

A. Hardly any; I think it is only the weight of the leg about all. The minute it starts pressing it immediately gives pain, by relieving the weight of the leg on the floor that is about all I can do, but now I cannot put no pressure on that, I can touch the floor coming down like that. I can touch the floor, but I cannot put no pressure on that foot. If I do I get the pain in the right hip.

(Testimony of George E. Ward.)

Q. Is it severe or is it light pain?

A. Yes, it is a **[195—128]** severe pain.

Q. Mr. Ward, I will ask you, since your accident, whether you have been able to get on and off street-cars? A. No, sir.

Q. Will you explain to the jury why that is?

A. Why, I cannot get up on the steps, the steps are too high.

Q. Well, couldn't you raise on your crutches and put your leg up?

A. Raise on my crutches, yes, but if that car starts or anything what am I going to do if I release my crutch, if I release my hand on the crutch and the car starts up I have lost my crutches, what am I going to do?

Q. Mr. Ward, you say that the cable that was used on this occasion was a right-handed cable?

A. Yes, sir.

Q. You were shown a sample of cable which is here on the desk, what is that kind of a cable?

A. Left-handed cable.

Q. What is the difference between the right-hand cable and the left-handed cable, Mr. Ward?

A. The way that the wires is wound in the strands.

Q. What was the kind of cable that was used on the coal-conveyor? A. A right-handed cable.

Q. Could a left-handed cable be run the same as a left-handed cable?

A. Not run the same as a right-handed, if you do you would untwine the whole cable.

(Testimony of George E. Ward.)

Q. What?

A. If you are to run a left-handed cable run it the same way on the drum you would untwine the left-handed cable.

Q. The drum running towards the right?

A. Yes, sir.

Q. In other words, as I understand you, the strands have to go,—the strands of the cable have to be in the same direction as the running of the drum?

A. Yes, sir, if they do not it will untwine.

Q. If you have a cable the strands of which are moving in the opposite direction to the direction in which the drum was **[196—129]** running, what would be the result?

A. It would untwine the cable.

Q. Mr. Ward, is there any difference between the sample of cable that has been shown you and the cable that was in use on the Inter-Island Steam Navigation Company's coal-conveyor at the time you were injured? A. Yes.

Q. What is the difference?

A. The one which was in use at the time I was injured was a right-handed cable, the wires of that strand was opposite to this one turning right hand. In this cable the strands are turning the opposite way, left handed.

Q. What else with respect to this cable?

A. There are no wires sticking out in this cable and there was in the cable that was in use at the time of the accident.

Q. In other words, this is a sample of a left-handed

(Testimony of George E. Ward.)
cable, is it not?

A. That is a sample of a new left-handed cable.

Q. Mr. Ward, did you ever leave the employ of the Inter-Island Steam Navigation Company prior to your accident? A. Yes, sir.

Objected to as incompetent, irrelevant and immaterial.

Mr. DOUTHITT.—I want to show that he left the employ and came back, that he left at such a date and went east and came back.

Objection withdrawn.

Mr. DOUTHITT.—Did you ever leave the employ of the Inter-Island Steam Navigation Company?

A. Yes, sir.

Q. Now, where did you go, if anywhere?

A. Back east.

Q. Do you know when that was?

A. In the month of May, 1911.

Q. How long did you remain in the east?

A. About close on to four months before I got back here.

Q. When did you return to the Inter-Island Steam Navigation Company?

A. September 1st. [197—130]

Q. In the employ—

A. September 1st, 1911, no, I think it was—yes.

Q. When you got back to work in September, on the first of September, 1911, what cable was being used on the coal-conveyor of the Inter-Island Steam Navigation Company?

A. The same cable that I saw—that was in use

(Testimony of George E. Ward.)

at the time of my injury.

Q. Do you know the life of a cable which is subjected or was subjected to the same amount of work that the particular cable was subjected to by which you were injured? A. Eight months.

Q. Do you know how long that cable had been in use at the coal-conveyor of the Inter-Island Steam Navigation Company? A. No, sir.

Q. When you returned, as I understand you, on the 1st of September— A. Yes,—

Q. You found the same cable by which you were subsequently hurt there? A. Yes.

Q. And that cable, as I understand you, was used on the coal-conveyor? A. Yes, sir.

Q. At different periods of time between the 1st of September and the 8th day of July—the 1st of September, 1911, and the 8th of July, 1912?

A. Yes, sir.

Q. Well, Mr. Ward, knowing the condition of the cable as you have testified on the Saturday immediately prior to the accident, I will ask you why did you continue in your employment?

Objected to as already asked and answered.

Objection sustained.

Q. At the time that the cable of the coal-conveyor was overhauled prior to the time of the coal ship coming in who overhauled the cable and overhauled the coal-conveyor? A. Jimmie Akina.

Q. Akina? A. Yes, sir. **[198—131]**

Q. And where were you?

A. Up at the shop, the Inter-Island shop working

(Testimony of George E. Ward.)

on the "Mauna Loa" that was laying opposite the shop on Queen street.

Q. The Inter-Island machine-shops are a distance from or about how far from the coal-conveyor, about?

A. About half a mile, I guess.

Q. This coal-conveyor is located on the water-front opposite the Honolulu Iron Works, here in the City of Honolulu? A. Yes, sir.

Q. You say that when you fell you fell on the dock below, Mr. Ward? A. Yes, sir.

Q. And the dock is made of what? A. Wood.

Q. Mr. Ward, have you any other vocation except that of machinist? A. No, sir.

Q. Do you know anything else besides that?

A. No, sir. **[199—132]**

In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

January, A. D. 1914, Term.

LAW No. 7721.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,

Defendant.

Monday, June 1st, 1914.

Cross-examination of GEORGE E. WARD.

Mr. STANLEY.—Mr. Ward, have you ever had experience on a coal-conveyor other than this one

(Testimony of George E. Ward.)

of the Inter-Island Company? A. No, sir.

Q. All your experience with reference to cables such as are used on this coal-conveyor of the Inter-Island Company has been derived from your work at that conveyor? A. Yes, sir.

Q. Now, when you speak of the life of the cable being eight months, what do you mean, Mr. Ward?

A. Why, a cable as used down at that coal-conveyor with the amount of work that that coal-conveyor had done, that cable was only good for eight months when it should have been replaced by a new one.

Q. How do you know that?

A. From my experience down there. **[200—133]**

Q. What has been your experience down there; have you ever taken out cables in eight months?

A. Oh, they have taken them before that, Mr. Stanley.

Q. And do you know why they have taken them out before that? A. Yes, sir.

Q. Now, why was it?

A. Because they should have a new cable.

Q. Is that the reason? A. Yes, sir.

Q. And that is the truth?

A. That is the truth. At another time in two weeks they had to put in a new cable.

Q. Because the other cable was worn out in two weeks? A. No, it was not worn out, Mr. Stanley.

Q. Was its life, then, two weeks?

A. What is that again?

Q. Was its life, then, two weeks?

(Testimony of George E. Ward.)

A. No, that was the cable that caught on the drum and unstranded just the same as I have been showing with this left-hand cable and therefore could not be respliced because the splicing came out.

Q. Now, Mr. Ward, is it not a fact that the Inter-Island Company from the time of starting the business of this conveyor that they had trouble with the drums, that is, the cable was not wound properly around the drums and consequently the cable was being stranded, the strands came out and the cable generally came out, unwound and they had a great deal of difficulty before they got onto the way of doing?

A. Yes, that is what I am telling you now of the unstranding.

Q. Then it was not on account of the cable being worn out and being removed by the company in a shorter period than eight months, it is because of the way that it was wound on the drum, on account of the way the cable was wound around the drum that spoilt the cable, was it not?

A. The strands came out, **[201—134]** and the splices came off.

Q. When you took these cables off before they had run for eight months, it was not that the cable was all worn out by use, but because it was improperly and unskillfully wound around the drum, that is right, is it not?

A. Because the strands came out we could not use it, that cable, we would have a cable coming off the dollies, or anything else and the splices coming out.

(Testimony of George E. Ward.)

Q. And as I say, the only reason they took out the cable in a less period than eight months was because of the manner in which it was wound around the drum, making the cable go to pieces there, that is right, is it not?

A. Yes, because it became untwined.

Q. Now, then, I ask you what do you mean by the life of the cable being eight months?

A. A cable like the cable that was on the conveyor at the time of my accident, and a cable with the constant work that they had done there, the amount of work, was only good for eight months, and should have been renewed by a new cable.

Q. How do you know that; why don't you put it in after seven months or nine months?

A. From my experience down there, down at the coal-conveyor, Mr. Stanley, I answered you that.

Q. That is all from your experience?

A. Yes, sir.

Q. Now, do you mean, Mr. Ward, that when a cable has been working there for eight months that it is unfit for use?

A. It depends on the condition of the cable. If that cable had been used the same as cables before and these strands had started cracking, the wires had started cracking, it would only be about eight months that you would start seeing these wires breaking, then it should be renewed. The life of the cable is eight months, that is all, and it wears down and the wires start [202—135] cracking and coming out.

Q. Now, I am not asking you, Mr. Ward, about the

(Testimony of George E. Ward.)
life of any particular cable, I am asking about the life of a cable down there, not this particular one by which you were injured, but any cable; do you mean when you say the life of a cable—not this particular cable—the life of a cable is eight months, do you mean at the end of eight months it is unfit for use?

Objected to.

Mr. STANLEY.—Do you mean, Mr. Ward, that when a cable has been in operation, not lying down on the wharf, or not packed up in tissue paper, or anything of that kind, but when it has been in operation on the coal-conveyor for eight months then it is unfit for use, unfit and dangerous to use?

A. No, sir.

Q. Then what do you mean by the life being eight months?

A. If you will please let me explain; if a cable is used for the purpose of hauling those cars which has grips on the grips will tear the wire more than it will when it is running on the sheave or any other piece of machinery, but the grips when they grip on down on that wire it does not start that car on an instant, that cable drags through that grip two, three and four feet before that car is in motion and that is what tears the cable out, that class of work; where the cable is hauling up coal it has not anything like that friction, no friction like that, that that cable has. And if you start using a brand new cable, whether it has been manufactured right by the manufacturing people that makes it and placed in that coal-conveyor the day after it is got, and you use it dis-

(Testimony of George E. Ward.)

charging as much coal as the cable has I have seen down there, and the amount of cars hauled, and the amount of times that the grips had gripped that cable and tearing that cable, that cable was only good for eight months, that is the life at that class of work I am speaking about. [203—136]

Q. And you are emphasizing with your right hand all the time, Mr. Ward?

A. With this right hand, yes.

Q. Now, Mr. Ward, I asked you a very simple question; I said, do you mean that a cable subject to the use that is had on this coal-conveyor where it goes around the dollies— A. Yes, sir.

Q. Listen—it is drawing coal-cars, it is working on dollies, it is subject to the grips on the cars; now, my question is simply: Do you mean having been subject to that use for eight months it is then unfit for use and dangerous; that is a simple question.

A. Why I just explained to you.

Q. Will you answer my question? Do you mean it is unfit for use and dangerous?

A. If the wires is cracking and starts sticking out.

Q. If the wires are cracking and start sticking out, yes. A. Yes.

Q. If they are not, the cable can run no longer than eight months, can it?

A. If the wires are in a smooth condition.

Q. And how much longer can they run?

A. I do not know, on that class of work, it all depends upon the work that that cable had done. If it had worn them little wires down and the wires had

(Testimony of George E. Ward.)
parted and were sticking out, that wire should be renewed.

Q. You testified at the last trial, did you not, Mr. Ward, in this case? A. Pardon me?

Q. You testified, did you not, in the last trial of this case? A. I did, I testified.

Q. Didn't you testify there, Mr. Ward, that all you meant by saying the life of a cable was eight months was that it is a matter of good business for the company to put in a cable at the end of eight months so as to insure that there would be no [204—137] stoppages in the work?

A. Why, let me explain that. I explained that the life—

Q. Did you testify that at the last trial?

A. I don't remember now exactly the words that I used.

Q. You don't remember? A. No.

Q. Well, I will ask you then, not giving your words, I will ask you if you testified in substance that what you meant by the life of a cable being eight months was that it would be a matter of good business policy for the company which wanted to get these vessels unloaded as quickly as possible to renew a cable after eight months so that there would be no stoppages in the work?

A. Well, I meant that these wires—

Q. Did you so testify in the last trial?

The COURT.—Answer the question, if you can, as put to you, you can make any explanation you want afterwards. Do you recall any such statement,

(Testimony of George E. Ward.)

the purport and import and effect of which Judge Stanley has stated to you with reference to your reasons for giving the life of a cable at eight months at the last trial of this case; do you remember making any such statement?

A. Why, no, your Honor, I do not remember those things.

Mr. STANLEY.—You have no recollection of stating anything of that kind?

A. I have a recollection of stating about eight months the life of that cable used on that class of work.

Q. But you have no recollection of saying that what you mean by that was merely this, that it would be a matter of good business policy, a matter of advantage to the company to renew its cable every eight months so as to avoid stoppages in the work?

A. Why, if I said that, Mr. Stanley, I meant that the cable would come off the dollies, that would be stopping that work, to stop the cable on account of coming off the dollies, that is stopping that part of the work, it might [205—138] have stopped *the where* towers from working, that is what I meant if I said that.

Q. Have you a recollection of saying that would be a matter of good business policy for the company to renew its cable every eight months, that the work on the track, in the towers and on the track would not be stopped? A. I don't remember saying that.

Q. Do you remember testifying that that did not mean or do you want the jury to understand that at

the end of eight months the cable would not be unfit for use or dangerous? A. What?

Q. Do you remember stating at the last trial of this case that at the end of eight months the cable would not be dangerous or unfit for use?

A. If it had not been worn down and cracked, if the wires had not been cracked,—if the wires were simply worn down smooth that is a different thing altogether but if these little wires are broke and they stick out then it should be a new cable, that is what I meant by the life of the cable in that class of work and used in that way.

Q. So what you meant, Mr. Ward, is that when a cable is broken, when the wires are half cracked, that then the life of such a cable is eight months?

A. I mean that if that cable had hauled that amount of coal or been used by the grips starting these wires breaking, that that is the life of that cable.

Q. If the cable is worn out practically?

A. That is it starts cracking, Judge Stanley.

Q. What?

A. That is if these wires are cracking and breaking and start coming out.

Q. Now, your first complaint about this cable, Mr. Ward, was made when?

A. At the time I put in a new drum.

Q. And that was about when?

A. About a month before [206—139] the accident.

Q. About a month? A. About a month.

(Testimony of George E. Ward.)

Q. That was early in June, was it not?

A. Sir?

Q. Early in June? A. Yes, sir.

Q. And that was the first time you made a complaint about this cable?

A. Yes, that is the first time I made a complaint about that cable. That is the time that I saw that the wires were cracking and coming out.

Q. Now Mr. Ward, I understand that this model was built by you?

A. Yes, sir, I put that model together.

Q. Done by hand or by machinery?

A. Well, the putting together was done by hand, but those little pieces of wood were sawed by a planing-mill.

Q. Not by you? A. No, sir.

Q. And these dollies, were they made by you?

A. They were made by me.

Q. They were made by you? A. Yes, sir.

Q. When I refer to dollies, they call them pulleys in this case, appearing at the makai end of the coal-conveyor, what do you call these little jiggers appearing on the tower? A. Wheels and sheaves.

Q. Who were they made by? A. By me.

Q. By hand? A. By hand.

Q. Which hand?

A. By mostly the left hand and the right hand assisting it.

Q. Are you left handed?

A. Yes, sir, I am now.

Q. Are you right handed or left handed?

(Testimony of George E. Ward.)

A. I am now left handed. Before my accident I was right handed.

Q. Up to the time of your accident and up to the time that you made this model you were right handed? A. What is that?

Q. Up to the time of your accident and up to the time that [207—140] that you made this model you were right handed?

A. Up to the time of my accident I was right handed, after the accident why I had to use my left hand.

Q. Up to the time that you were injured—

A. Yes, up to the time that I was injured I was right-handed.

Q. And this is the only work you have done since your accident?

A. That is the only work I have done since.

Q. And you say, Mr. Ward, that you erected the steel work or put the steel work on the coal-conveyor some five years ago under the direction of Mr. Johnson? A. Yes, sir.

Q. You personally attended to putting down the tracks? A. Yes, sir.

Q. Dollies and such? A. Yes, sir.

Q. And up to the time that you were hurt no change was made, was there, in the general appearance or condition of the coal-conveyor?

A. Not that I remember of.

Q. Not that you remember. For instance when the thing was installed, when it was first built there was no platform outside the tracks at the makai end?

(Testimony of George E. Ward.)

A. No, sir.

Q. And there was no rail? A. No rail.

Q. And that condition lasted from the time it was built up to the time that you were hurt?

A. Yes, sir.

Q. And you knew that?

A. Yes, sir, I knew that.

Q. Did you, Mr. Ward, assist or direct the reeving of the first cable that was used on the coal-conveyor, the reeving or running of the first cable?

The COURT.—The reeving or running of the first cable?

A. No, your Honor, that was done by a cable man, but I was there when it was done. I did not assist in any way.

Mr. STANLEY.—What were you doing there?

A. I was foreman there.

Q. You were foreman of what?

A. Of the coal-conveyor. [208—141]

Q. And the first cable which was rove or put on the conveyor was put there by Mr. Williamson or by somebody outside of yourself? A. Yes, sir.

Q. But you were on the coal-conveyor as foreman?

A. Yes, sir.

Q. Doing what? A. Foreman.

Q. What were you doing?

A. Why, bossing the men.

Q. Bossing the men? A. Yes, sir.

Q. Where? A. All around the coal-conveyor.

Q. All around this coal-conveyor?

A. Yes, wherever they had to work.

(Testimony of George E. Ward.)

Q. Wherever they had to work? A. Yes, sir.

Q. On top of the conveyor?

A. On the platform, up in the engine-room, up here.

Q. And how long did you continue to act as such?

A. I don't know the length of time.

Q. Well, give the jury some idea.

A. Why after the coal-conveyor had all been erected I think there was one coal boat came in and I went down there.

Q. Went down where?

A. To the coal-conveyor and after that why I went back to the shop again.

Q. And you continued, did you not, to act as foreman of the conveyor from the time that the conveyor was erected up to the time that you were hurt; that is, whenever a foreign coal ship would be in?

A. Yes, sir, whenever a foreign coal boat would be in.

Q. And your duties were to boss the men and have general charge of that conveyor, were they not?

A. No, down in the ship.

Q. What did you mean a few minutes ago that you were up here when the cable was being rove and you were foreman of the job and were bossing the men on top of the conveyor? [209—142]

A. There was no ship in there, that was before a coal boat ever came to the island, to that conveyor. That is the first cable put in.

Q. You were foreman or what when the boat was not in,—were you foreman in charge of construction

(Testimony of George E. Ward.)

or what? A. I was foreman of the men.

Q. What were they doing?

A. Why, whatever they had to do.

Q. Do you mean unloading vessels or coaling the Inter-Island vessels?

A. I told you no coal boat had arrived when that was put in.

Q. Were they then loading their own boats, Inter-Island boats?

A. Yes, sir, at times they had to load Inter-Island boats.

Q. And when they were loading the Inter-Island boats you were foreman of the conveyor or bossing the men up here on the platform? A. Yes.

Q. When did you cease that operation?

A. Right after the coal boat was discharged.

Q. What?

A. Right after that first coal boat was discharged I went back to the shop, I was through with that.

Q. Then there was no foreign boat in, was there?

A. I told you just now, Mr. Stanley, that right after the first foreign coal boat then I went back to the shop.

Q. Well, now, we will take the first foreign coal boat, when that was in you were bossing the whole show, were you not?

A. I was bossing the which?

Q. The whole show, the whole conveyor.

A. I was foreman there, yes.

Q. Of the whole conveyor?

A. The coal-conveyor.

(Testimony of George E. Ward.)

Q. Directing these men and supervising all the work there? [210—143] A. Yes, sir.

Q. Now, then, when first coal boat had discharged you went back to the shop? A. Yes, sir.

Q. When did you next go down to the coal-conveyor? A. When the next coal boat came in.

Q. And what was your job then?

A. On board the ship.

Q. Now, was there a distinction then between your job when the first coal boat was in and the second coal boat was in? A. Yes, sir.

Q. Who made that distinction?

A. Why Mr. Larsen he had charge and with all stevedores, not Inter-Island men, but stevedore men. Mr. Larsen he bossed the first boat that arrived, foreign boat, with his men.

Q. Now, I am asking you who changed your occupation? A. The company.

Q. And who for the company?

A. The Inter-Island Company.

Q. Which particular man, the corporation didn't do it itself? A. Mr. Gedge.

Q. The corporation didn't do it itself?

A. Mr. Gedge.

Q. That is several years ago? A. Yes, sir.

Q. And what did Mr. Gedge say to you?

A. Mr. Gedge said that he would take charge of the discharging of the boats, that he would not give it to Mr. Larsen any more, Larsen took too much time, too much expense, and he took full charge.

Q. What did he say to you?

(Testimony of George E. Ward.)

A. Well, he didn't say anything to me, but when the ship came he placed me down in the ship. He didn't say anything to me.

Q. What did he say to you first before placing you down in the ship, what did he say to you?

A. That he would take charge of discharging the ships.

Q. I am asking you what instructions he gave to you?

A. Why, when the ship came in he told me to go aboard of the **[211—144]** ship.

Q. And told you to stay there?

A. I was to look after the men aboard the ship.

Q. Did he tell you that your duties now, Mr. Ward, will be to go down on the ship and stay there and watch the discharge of the cargo, of the coal, is that right?

A. Whenever I was needed on top why they had to call me.

Q. Who told you that? A. Mr. Gedge.

Q. So that Mr. Gedge told you to go down there and watch the discharge of the cargo and also attend to any repairs that would have to be made on the conveyor itself?

A. If I was called up there I would have to go up there.

Q. Now, will you tell us as well as you can what Mr. Gedge's instructions were to you?

A. I have just very plainly told you, Mr. Stanley, that I was to be aboard the ship.

Q. Anything else?

(Testimony of George E. Ward.)

A. And if I was called up above I would have to go up above.

Q. He told you that?

A. Yes, that was my orders.

Q. And your job down there was foreman of the coal-conveyor?

A. I was foreman, but my principal work was on board the foreign boats.

Q. Well, so your principal work, you were foreman of the coal-conveyor, were you?

A. I was foreman down there, and had to be foreman over the men as whole and whenever Akina would not be handy then I would be called and I would have to go up there, Mr. Stanley.

Q. Mr. Ward, I show you the complaint in this case and ask you if that is your signature?

A. Yes, that is my signature.

Q. And this is your signature to the affidavit here?

A. Yes, my signature. [212—145]

Q. You have sworn in this case—did you not swear when you filed the case originally as follows: That on said 8th day of July, 1912, and some time prior thereto the plaintiff herein was employed by said defendant as the general superintendent of said coal-conveyor?

A. Well, now, Mr. Stanley—

Q. I am asking you did you so swear?

A. Mr. Stanley—

Q. Answer my question yes or no and then make your explanation? A. Yes, sir.

Mr. DOUTHITT.—Now, your explanation.

(Testimony of George E. Ward.)

A. Why, the next time that I had notice about superintendent I noticed in the Advertiser paper I clipped that piece of paper and I took it down to my attorney, Mr. Douthitt, and I asked him why was the reason that I was put in there as superintendent, that I had never been a superintendent in the Inter-Island and I complained about them words. I did not make that thing out, Mr. Stanley, my attorneys done that.

Q. Out of their own heads? A. They done it.

Q. Do you mean to say that Mr. Douthitt knew anything about your employment there until you told him?

A. When I read it in a paper about being a superintendent I clipped the little piece of paper out and told him that I didn't say that and why was it put in.

Q. You have answered that three or four times.

A. That I told him I was foreman.

Q. Did Mr. Douthitt know anything about your employment down there except what you told him?

A. I didn't tell him that I was superintendent.

Q. What?

A. I didn't tell him that I was superintendent.

Q. Then you cannot understand, then, how it is that you were made to swear to the fact that you were general superintendent **[213—146]** of the conveyor?

A. I took the clipping of the paper, the piece of paper down to him and asked him that I was never superintendent and I had never said so.

Q. Can you kindly explain how that expression

(Testimony of George E. Ward.)
got into your complaint? A. No,I do not.

Q. Then, you amended the complaint, did you not, Mr. Ward, so as to read, the plaintiff herein was employed by defendant as the foreman of said coal-conveyor?

A. I told my attorney.

Q. You told your attorney we must change this complaint, don't call me general superintendent, but call me foreman of the coal conveyor?

A. I did not tell him that we must change that thing, I told him that I did not say that I was superintendent.

Q. Did you— A. I told him I was foreman.

Q. Did you tell him, Mr. Ward, that you were foreman of the coal-conveyor?

A. I told him that in the start, that I was foreman.

Q. Of the coal-conveyor? A. Yes, sir.

Q. Not of the coal ships? A. Yes.

Q. But of the coal-conveyor?

A. Yes, that is was also foreman for the Inter-Island Steam Navigation Company.

Q. And foreman of the coal-conveyor?

A. Foreman down to the coal-conveyor.

Q. You say you put up the original coal-conveyors from the blue-prints handed to you by Mr. Johnson. Examine those and see if they are the blue-prints?

A. I put up the steel work.

Q. All of the steel work?

A. I think that is a blue-print given to Mr. Ouderkirk. That is principally woodwork.

Q. It is not a—

(Testimony of George E. Ward.)

A. It is one of the blue-prints Mr. Ouderkirk used.

Q. It is not a blue-print given to you?

A. It is a blue-print [214—147] of the track, that is all.

Q. Does not that show the steel work?

A. That shows the track, the portion of the track.

Q. And it is according to a blue-print given you like that, is it not, that you put up the steel work of the conveyor? A. The track, yes, sir.

Q. And the dollies? A. And the pulleys.

Mr. STANLEY.—I ask that the blue-prints be marked for identification.

The COURT.—It may be marked for identification as Defendant's Exhibit 1.

Mr. STANLEY.—Now, on these coal ships, Mr. Ward, a number of stevedores were employed—on these foreign coal ships a number of stevedores were employed and you say that those men were hired by Mr. Gedge? A. Yes, sir.

Q. Secretary and treasurer of the company?

A. Yes, sir.

Q. And you know, do you not, that there were lunas over those stevedores?

A. There was one man placed in the hold and he was a kind of a luna when I had to go back to a different hold than he was in he would have a say over the men.

Q. There was one luna, was there not, in each hold? A. Yes, sir.

Q. In each hold? A. In each hold.

Q. And those were men who were paid extra, were

they not, for acting as lunas?

A. I don't know their wages, Mr. Stanley. I don't know.

Q. I am not asking you whether it was a dollar and a half or two dollars, but were they not paid extra for acting as lunas?

A. I don't know, Mr. Stanley.

Q. You never heard of it?

A. I don't know what their wages were; I don't know whether they were paid more or not.

Q. And you do know there are stevedores or lunas over the [215—148] different holds of the vessel?

A. Yes, sir.

Q. What are their duties?

A. To tell the men where to shovel. If I am there they take orders from me if I tell them to shovel out of this place or out of that.

Q. To keep the men working?

A. To keep the men working.

Q. To keep the men working and supervise the shoveling of the coal to have a cargo discharged as quickly as possible? A. Yes, sir.

Q. What were your duties? A. Foreman.

Q. What were your duties?

A. From one hole to the other bossing them men.

Q. You've got a boss in each hole to see that the coal was properly shoveled? A. Yes.

Q. What were your particular duties, to see that this man or the other man, the lunas, were getting the coal out?

A. I was boss over him and all the men, when I

(Testimony of George E. Ward.)

was there he had no word to say, I had all to say and when I left then he had a say about the men who were working or loafing.

Q. When you went away from the hold you'd leave him there looking after these stevedores?

A. Yes.

Q. And when you were there he would be there still bossing the men? A. He would be there.

Q. Bossing the men?

A. I would be bossing them.

Q. And what would he be doing?

A. He would be there.

Q. Doing what?

A. He would do anything he got to do, sometimes he'd take a shovel and shovel coal.

Q. What other duties did you have besides seeing that these lunas did their duty?

A. Why, from one hold to the other, I just told you that, Mr. Stanley, that was a part of it, unless there was some stoppage and I was called on top, why then I would go and see what I was called for. **[216—149]**

Q. You know, do you not, Mr. Ward, that when a coal-ship comes in, the first few days that there is nothing to be done in the way of shoveling coal at all, that the bucket is lowered down into the hold and automatically grabs the coal up and it is swung up to the top? A. Yes.

Q. There is really nothing to be done there in shoveling?

A. Only to watch the buckets and watch the coal,

(Testimony of George E. Ward.)
whether the coal comes out, that is my duty.

Q. To watch the bucket?

A. To watch the bucket.

Q. To watch the coal coming out?

A. To watch the coal coming out.

Q. Now, Mr. Ward, in other words you were practically tallying that coal, that is right, is it not?

A. What is that again?

Q. You were practically tallying the coal?

A. I was not tallying if it was going below 'tween decks, if they had 'tween decks, then I told Mr. Gedge to come down and put some more men in and shovel in that 'tween decks. If there was no 'tween decks the shovel could continue on in that hold until we moved again.

Q. I understand you were forty years of age at the time the accident happened? A. Yes.

Q. And from your boyhood you were machinist and engineer? A. Yes.

Q. And that has been your life's work?

A. Yes, that has been my life's work.

Q. Around machinery? A. Around machinery.

Q. And up to the time that you got this job, not shoveling coal, but seeing others shoveling coal, that has been your sole work, has it not?

A. I was a machinist and when I was called up why I would go up, I was taken down there as foreman. **[217—150]**

Q. That is the only time that you acted as foreman, seeing that coal should come out of a ship?

A. That is the only time.

(Testimony of George E. Ward.)

Q. The rest of the time you were around the machine-shops? A. Yes, sir.

Q. Now, is it not a fact, Mr. Ward, that you were a high-priced man down there and you were put there as a high-priced man, being a machinist and engineer in charge of that coal-conveyor?

A. Well, I had charge of the vessel, of that boat, but mostly always I was on board of the ship or I was called up, Mr. Stanley, then I would have to go up, that is what I stated to you.

Q. If you were not called up what then?

A. Why, then I remained aboard the ship.

Q. You testified, did you not, Mr. Ward, on the last trial that whether called up or not, if anything happened on the coal conveyor it was your duty to go up and see to it?

A. If the bucket stopped taking coal and I happened to be down in the hold I would wonder what had stopped it, I would naturally walk out of that hold and look up and if there was any of the men up in these towers that I could make a motion to, or ask they would simply tell that their hopper was full, then I would know there was something wrong, and then I would walk up.

Q. I am asking you the simple question, did you testify at the last trial that it was your duty, if anything happened on the coal-conveyor to go up and attend to it? A. If I was called up.

Q. I am asking you if you testified this way?

A. I don't remember exactly what I testified, Mr. Stanley.

(Testimony of George E. Ward.)

Q. Does this really express the truth?

A. I don't know, I told you that I don't remember that. **[218—151]**

Q. You know the truth now, don't you?

A. Yes, sir.

Q. Was it your duty to go up on that coal-conveyor and attend to anything that was out of order?

A. If I was called up, yes, while a coal-boat was in or if I had been working in the Inter-Island shops and they sent up for me it was my duty to go down.

Q. Is it not a fact that Akina was a foreman down there under you?

A. Mr. Akina was a foreman down there when I was never near the place. I went down there, Judge Stanley, when the coal ship was in.

Q. Is it not a fact that when you were down there at that coal-conveyor that Akina was the boss or foreman under you?

A. He was a foreman on the upper place and if Mr. Gedge told me to tell him anything he would take the word from me.

Q. Can you answer that yes or no and stop quibbling. When you were at the coal-conveyor was Mr. Akina under you?

A. Mr. Akina was under Mr. Gedge.

Q. Was he or was he not under you?

A. If I gave him any order. He was not exactly a boss under me, Mr. Stanley, I was not a boss over him.

Q. Didn't you testify at the last trial, Mr. Ward, that there was a boss or foreman under you at that

(Testimony of George E. Ward.)

coal-conveyor and that was Mr. Akina?

A. Well, he was a foreman there.

Q. I am asking you did you testify that at the last trial?

A. Why, I don't know just exactly whether I testified that Mr. Stanley, if I said that he was under me. If I had been given any orders then I would go and tell Mr. Akina, why then he would do it.

Q. Then Akina got his orders from you, is that right? A. At times.

Q. Now, Mr. Ward, with reference to this cable, you understood when it was introduced that it was introduced merely so that **[219—152]** the jury could see the manner of the construction of cable, that it was a three-quarter-inch cable, that it was a six-strand 19-wire steel cable, you understood that, didn't you, you understood it was introduced merely for that purpose?

A. Yes, but when I began to explain the difference in this I said then that was a different cable altogether than the other one and I wanted to explain why it was a different cable and I was stopped.

Q. You understood the purpose for which it was introduced was merely to show the jury what a six strand, 19 wire three quarter inch cable was?

A. I understood you when you said that and when I seen you had introduced a left-handed cable I knew it was entirely different from the cable that was in use.

Q. But with the exception of being left-handed, otherwise it is identical with the new cable that was

(Testimony of George E. Ward.)

in use on the coal-conveyor. Is there any other difference between that and a new cable that was in use when you were working there except it is what you call a left-handed cable?

A. Why, I have not counted the wires in that strand, Mr. Stanley, and I am not sure whether there is 19 in there or not.

Q. Is it, with the exception of being a left-handed cable of wire, apparently identical?

A. It is about the same diameter.

Q. Now, you say you got your orders from Mr. Gedge at this coal-conveyor; give us an idea of the nature of those orders.

A. Why, when the coal-boat come in, why, then, I would be sent for to go down there. Mr. Gedge would be there and go aboard the ship and look at the holds. We would ask the captain how many ton was in this hold, how many ton was in that hold, then we would start discharging and without any men.

Q. What?

A. We would start discharging without no men on board the ship in the holds. After the coal got down **[220—153]** a certain distance, Mr. Gedge would come back there and he would say, put men on tomorrow, or we will put on men at one o'clock, and he would pick out those men and the men would be placed in the hold.

Q. And it took several days, did it not, before the cargo was reduced to such an extent that you needed men in the hold?

A. It all depends on the ship, Mr. Stanley.

(Testimony of George E. Ward.)

Q. Well, why?

A. Why, if it had 'tween decks then only for a day and he would put a few men in the hold.

Q. Now, so far you have told us the nature of Mr. Gedge's orders to you, he would say we will put so many men in the hold, or we will need ten or fifteen men to go to work at seven in the morning or say in the afternoon, that is right? A. Yes.

Q. What other orders did Mr. Gedge give you—you knew Mr. Gedge was neither a machinist or engineer?

A. I don't think he is a machinist or engineer.

Q. You know he is not? A. Yes, I do.

Q. Now, then, what other orders did Mr. Gedge give you as machinist and engineer?

A. We may work that hold that day and then he would say we will move to the next hold.

Q. Any other orders?

A. He would say I am going up to the office, you tell Akina to move that tower, you tell Akina to do this, you tell Akina to do that, all such orders as that he would give me.

Q. Can you give us any idea of any other orders?

A. He would tell me to get out that coal as quick as we can.

Q. As quickly as possible, that was the idea of Mr. Gedge right along to have the vessel discharge as quickly as possible? A. Yes.

Q. To have the work go along as efficiently as possible? **[221—154]** A. What is that?

Q. Have the work go along, proceed as quickly as

(Testimony of George E. Ward.)

possible? A. Empty them as quickly as possible.

Q. As efficiently as possible; you know what I mean by efficient, that was the idea of Mr. Gedge as secretary and treasurer of this company?

A. If anything happened we would have to see Gedge about it.

Q. I am asking you about what Mr. Gedge would say. He wanted the coal-boats discharged as quickly as possible and said to get the work done as quickly and efficiently as possible?

A. He would not mention them words, quickly or efficiently, he would say get it out as quickly as possible.

Q. And Mr. Gedge knew, did he not, that if there was a bad cable on the track that that would necessarily mean stoppages in the work?

A. Well, he was told on Saturday about there being a defective cable, Mr. Stanley, and I am sure he would know.

Q. Mr. Gedge worked there as secretary and treasurer of the company, and down there even since this coal-conveyor has been erected?

A. Well, he has worked down on that end of the conveyor longer than I have myself. He has been at that coal-conveyor long further than I have been there.

Q. Yes; and now you were down there on these coal vessels I understand from the time that the plant was built up to the time that you were hurt, whenever a coal vessel was in, with the exception of a short time when you were away at the Coast, we

(Testimony of George E. Ward.)

will say from May to September, 1911; that is right, is it? A. That is right.

Q. And don't you know that Mr. Gedge was aware of the fact that if there was a cable in bad condition that that would necessarily mean stoppages and delay with the work?

A. Why, that is what he was there for. We had to take his orders. If he said not to change it we could not change it. **[222—155]**

Q. You knew he was aware of the fact that if he was using a rotten cable it would mean delay and stoppages in the work?

A. Why he certainly must know it Saturday when he was told about it.

Q. And before that, he had been there for years before that?

A. Why yes, he was down there more than I was.

Q. And he knew when there was a rotten cable there it would necessarily mean delays and stoppages in the work? A. He would know.

Q. Now you say the first time you mentioned the fact of the cable being in bad condition to Mr. Gedge was about a month or three weeks—three weeks or a month prior to your accident, that is right, is it not?

A. Yes.

Q. That is the first time that you mentioned it?

A. About that cable?

Q. About that cable. A. Yes.

Q. And where did you have the conversation with Mr. Gedge? A. At the engine-room.

Q. At the engine-room. And Mr. Gedge went up

(Testimony of George E. Ward.)
to the shops, I understood, and took you down in his automobile?

A. I think he did. I don't know whether he took me down in his automobile or Mr. Kennedy's.

Q. Well, what about and for what purpose did you go down to that cable?

A. Why he told me that he had trouble down there with the cable and wanted me to come down there.

Q. He told you he had trouble with the cable, is that right?

A. He told me that he had trouble about the cable down there and wanted me to come down there.

Q. So that when you went with him your idea was to go down there and tend to the cable?

A. When we went down there I looked at the cable and I looked at the drum. [223—156]

Q. But when Mr. Gedge went for you he told you that there was trouble with the cable? A. Yes.

Q. Did he tell you the nature of the trouble?

A. He told me that it was tangling on the drum.

Q. Is it not a fact, Mr. Ward, that you went down there to attend to the drum?

A. Why he took me down there to see what caused the tangling on the drum.

Q. Is it not a fact that the primary object of your going down there was not to put in a new cable, to suggest a new cable, but was to fix the drum?

A. When I went down there I stood there while it was done, but that could have been done without me, Mr. Stanley.

Q. Was not your object in going down there not to

(Testimony of George E. Ward.)

put in a new cable but to fix the drum?

A. My object was to go down there and see what the matter was, and when I saw what the matter was I told him to put in a new cable and a new drum and he told me to never mind the cable, to put in a new drum.

Q. You testified at the last trial, did you not, Mr. Ward, that you went down there to attend to the drum, and the cable was an afterthought?

A. I might have testified to that, but that was the purpose that I went down there.

Q. To attend to the drum?

A. I don't know whether I testified to that or not; I have not read that thing, Mr. Stanley; I don't know what I testified to there, and if I did say that, it was with reference to the cable and the drum. I am pretty sure that I did mention the remarks I am mentioning now that I told him about. I told him to put in a new cable and new drum.

Q. What was the condition of the cable?

A. The wires were breaking and started sticking out.

Q. To what extent? A. In places.

Q. Right through the length of the cable?

A. No, in places. [224—157] I didn't look at the whole length of the cable, it was at the drum I was looking and down in the engine-room, there is four turns around that drum, and then where it leaves the drum at the top. I could not notice the whole cable.

Q. At that time you had not seen its whole length?

(Testimony of George E. Ward.)

A. No, sir; I had not seen its whole length.

Q. And didn't know its condition?

A. At that spot I knew its condition.

Q. But didn't know the general condition of the cable at that time? A. Not all around the cable.

Q. All you noticed, then, was where the cable went around the drum and you saw wires, little wires sticking out in places?

A. Saw the wires broke, and sticking out.

Q. That is right? A. Yes, that is right.

Q. And that is the only examination you made of the cable at that time?

A. That is the only examination. I told him the condition of the cable.

Q. Told him what?

A. I told him the condition of the cable at that place, that the wires are sticking out, to put in a new cable and new drum.

Q. He could see it? A. He could see that.

Q. Then you just called his atention to the fact that on the drum you could see some little wires sticking out on the cable?

A. Right on the drum, where it leaves the drum to go up to the sheave, too.

Q. Your attention, anyhow, was directed to that in the engine-room where this drum was and all you saw was on the drum at the holes, these other places where it goes through the sheaves, you saw it in some places that little wires were sticking out?

A. Yes, the wires were broken.

Q. And that was the only examination you made

(Testimony of George E. Ward.)

of the cable at that time?

A. Yes,. that is all; I didn't go around. [225—158]

Q. And knew nothing about the rest of the cable?

A. No, sir; I didn't go around it.

Q. And to what extent, Mr. Ward, were these wires sticking out on the drum to where it went through the sheaves?

A. Some of them may be about a quaretr of an inch, some may be a half and some may be three-quarters, it all depends.

Q. I am not asking you about how much; I am asking you what you saw.

A. I am telling you what I saw. Some were long, some short.

Q. Some were a quarter of an inch, some maybe half an inch, and some may have been an inch?

A. May have been an inch.

Q. And at the time this portion of the cable was in that condition the company had a spare cable near the engine-house, ready to be put on the conveyor at any moment? A. Yes, sir.

Q. Now, when you speak about these wires sticking out, what do you mean, Mr. Ward; do you mean lying along the main body of the cable or sticking out perpendicularly?

A. Some of them were lying along, some of them were sticking at right angles, some were sticking straight out.

Q. Is it not a fact that with a cable climbing as you say on the drum that these little wires would be

(Testimony of George E. Ward.)

smoothed down the length of the cable and would not be sticking out? A. What is that again?

Q. Is it not a fact that with this cable on the drum that these wires would not be sticking out perpendicularly, but would be worn smooth with the body of the cable?

A. No, the drum would cause them to stick out, too, if they were smooth and happened to get tangled with the wire rope around the drum and when leaving the drum it could not leave because one of the wires—the cable would have hold of that wire and pull it off after [226—159] going around all along the coal-conveyor. Some were sticking out, some were laying at an angle, and all different shapes.

Q. And when the cable would come up through the sheaves on to the drum, it would pass, would it not, over a number of rollers stationed fifty feet or so apart? A. Yes, sir.

Q. And that would smooth out the roughness of the cable, wouldn't it?

A. No, that would cause a great deal of damage to the cable, too. All but two places, Mr. Stanley, they are using iron dollies and instead of the dolly turning it wouldn't turn, it wouldn't revolve, and the cable would wear a groove in there, and that would be cutting the wires, too.

Q. The tension, though, on the cable was such that the cable would wear grooves, would it not, through these little rollers? A. A flat groove.

Q. A flat groove. A groove in—the cable was so taut, and the tension was so great that it would wear

(Testimony of George E. Ward.)

a groove in this little roller, would it not?

A. I didn't say anything about tension; I told you awhile ago that the rope would sag.

Q. But with all your sagging and all your slack, this cable pasing over these little rollers would wear a groove in them?

A. Yes, sir; the weight of the cable.

Q. And the cable also did, did it not, wear a groove in the dollies? A. Yes, sir.

Q. And was that occasioned, Mr. Ward, by a condition of slackness or tension of the cable?

A. On those pulleys, by tension.

Q. What is that?

A. On the pulleys that was from the strain on it.

Q. The strain on what?

A. Just the pulley.

Q. In other words it was so taut—of course, not fully taut, but it was so taut that the cable going around on it would wear a groove in the little dolly?

A. Yes, it would wear [227—160] a groove down by the flange.

Q. When the dolly is new, there is no groove, is there? A. No, sir.

Q. I show you this, Mr. Ward, is that a new or old dolly? A. A new pulley.

Q. Being widest at the top part? A. Yes, sir.

Q. And then tapering down towards the flange?

A. Yes, sir.

The COURT.—What you refer to as the dollies are the rollers in the middle of the track?

A. Yes, sir.

(Testimony of George E. Ward.)

Q. And the others are pulleys? A. Yes, sir.

Mr. STANLEY.—And this, Mr. Ward, is a pulley which has been in use, and at the top of the flange there appears the groove worn by the cable, is that right?

A. I don't know whether that has been turned by a lathe, but I don't think that has been worn by a cable. There is no cable down there smooth like that, worn by a cable; that has either been cleaned up by a lathe or something; I have never seen anything like that in all my experience in any kind of a sheave or pulley. The lay of the rope will always lay in these things. You had one a little while ago, the boy brought it up and took it away again.

The COURT.—Which is the upper part of the pulley when the pulley is in place? A. That way.

Q. They set that way, with the open portion of the pulley up? A. Yes, sir.

Q. And the flange downward? A. Yes, sir.

Mr. STANLEY.—I would like to have these marked for identification, the new pulley to be marked 2.

The COURT.—It may be marked as Defendant's Exhibit 2. The second pulley with the groove in it may be marked as Defendant's Exhibit 3 for identification, and the dolly may be marked as Defendant's Exhibit 4. [228—161]

Mr. STANLEY.—That is what you refer to as a dolly, what is referred to as the roller? A. Yes.

Q. And those are grooves worn by the action of the rope? A. Yes.

(Testimony of George E. Ward.)

A JUROR.—Is that iron or steel? (Referring to the roller or dolly.)

A. Those are cast iron, I believe. Have I any right to speak about these dollies?

Mr. DOUTHITT.—Certainly.

A. Why in the first part, we always used iron dollies in that, and iron dollies was discarded and just plain wooden rollers put in place of the iron and that all my time in the coal-conveyor after these had been discarded there were wooden rollers placed, wooden rollers in the dollies. The dolly is called anything that will run either way, riding a rail or rolling about the same as dollies in lumber-yards that they roll lumber on, it is similar to the dolly that is used in lumber-yards that rolls underneath or you turn it upside down and put the timber on and draw the timber and the roller will turn.

The COURT.—Were all the dollies on the coal-conveyor on the 8th day of July fitted with wooden rollers or metal rollers?

A. Most of them were always wooden rollers.

Mr. STANLEY.—All were?

A. Yes, wooden rollers made out of ohia, made out of ohia wood.

Q. All of them?

A. With the exception of two by the scale-house are the only two always remained iron. Those two here were the only two that remained iron because the two wires would keep them turning, whereas the others, a little piece of coal would get in around them, and they would stop and not turn, an iron roller, and the

(Testimony of George E. Ward.)
wood would cause friction enough so that the dust would not interfere with the rolling of the roller, the turning of the roller. [229—162]

Q. Is it not a fact, Mr. Ward, at the time that you were hurt the company was experimenting with wood in the shape of dollies, and that they were partly iron and partly wood on that conveyor?

A. The ones that I can remember is the ones over here on the scale, that they were iron rollers.

Q. How many?

A. There were two, the others were ohia.

Q. Is it not a fact, distributed over the whole length of the conveyor there were iron ones and wooden ones?

A. In my experience, Mr. Stanley, I am telling you that they were replaced by wood.

Q. What do you mean by saying they are mostly wood?

A. The shaft is iron and the framing that holds it together is iron and the roller is wood and is made of this Hawaiian wood ohia.

Q. Is it not a fact, Mr. Ward, calling your attention now to exhibit for identification 3, is it not a fact that the cable did wear a groove in the pulleys similar to that groove shown in exhibit 3?

A. Why, that would wear a groove in these pulleys, Mr. Stanley, but it would show the form of the strands in the pulley. You had one here a little while ago, and I saw the boy packing it out again. If you brought that out before the jury, then they would thoroughly understand what I explained.

(Testimony of George E. Ward.)

Mr. STANLEY.—We packed nothing out.

Mr. HEMENWAY.—That is right, it was taken out.

Mr. STANLEY.—Then I didn't know anything about it.

Mr. HEMENWAY.—It is exactly like this, with the mark of the rope upon it. I will bring it up to-morrow.

Mr. STANLEY.—Except the pulleys that you saw in use—in the pulleys you saw in use, the groove had the mark of the rope on it? A. Yes. **[230—163]**

Q. Otherwise the groove was similar to that shown by exhibit 3?

A. There was a groove there with the mark of the strands of the wire.

Q. And it was similar to this exhibit; it was marked that way?

A. It was the same shape, about the same height and the same diameter and made in that way the same as that.

Q. I am not talking about the pulley, I am talking about the groove.

A. It was a groove and it had a mark from the impression of the strands of the rope.

Q. And was it a groove similar to that and differing only that it had the mark of the cable on it?

A. I just explained to you that the size and diameter of that pulley was exactly alike and it had groove, but it had the appearance of the strands of the cable in the groove.

Q. I am not asking you about the length, height, or

diameter of the pulley; I am asking you was the groove worn in the pulley similar to that shown upon exhibit 3, except that it had the mark of the cable on it?

A. Similar; do you mean the same, Mr. Stanley, do you mean the same depth, the same width?

Q. Similar as to size and general appearance.

A. Some of them are not quite that deep, but it has the impression of the wire in the groove.

Q. And that groove was caused by the tension and weight of the cable in operation?

A. It was caused, Mr. Stanley, I can plainly show you that why that was caused on the pulleys. With so many cars going towards the coal-yard way and full of coal, each car would average about three ton, empty car and full—empty car and loaded with coal would average maybe a little over three ton and there would be so many loaded cars going and there would be those empty cars coming, this hauling cable had all of the weight to haul, now that is where you got that tension on these pulleys, with all that weight to pull and these little [231—164] pulleys had that strain on.

Q. I am not asking you where this tension came from or anything of that kind while you are traveling around the coal-yard with loaded cars or anything; I am asking you, as a matter of fact, was not the groove worn by the tension of the cable, no matter where it came from? A. Yes, sir.

Q. Now, you speak about the slack of the cable, and you called the Court's attention to the fact that

(Testimony of George E. Ward.)

mauka of the scale-house, little Jimmie, I think you called him, would lift the cable with a hay-hook some two feet and more, and you say that happened you don't know how many times a day; could you give the jury any idea how often that happened during your time that you would see him lift up that slack with the hay-hook?

A. No, I cannot tell you how often, but I have seen it often and I have been up there and the tangle would be there; he would just simply get the wire and shake it and shake it. He would never stoop; he would stand right up straight until that thing came out, then he would drop it.

Q. What I asked you, Mr. Ward, was,—you said this happened or was a daily occurrence; about how often have you seen that in a day?

A. Maybe two or three times a day.

Q. And where would you be when you would see it?

A. I would happen to be up there on top of the coal-conveyor when he would be changing, maybe in around, for instance, when there was anything wrong up there, I would be around and the thing would be started; I would see him changing the wire, and I would see the thing get tangled and he would simply take it and shake it and the thing would come off.

Q. That is not that two or three times a day?

A. Not every day, some days.

Q. That is several times?

A. No, two or three times a day. [232—165]

Q. That you were up on the coal-conveyor and saw it? A. Yes.

(Testimony of George E. Ward.)

Q. What were you doing up on the coal-conveyor?

A. I had been somewhere around on the coal-conveyor.

Q. What had you been doing at the scale-house?

A. There is the step right by where he stands and does that, that is where you go up and down the coal-conveyor.

Q. Your job was down on the coal ship?

A. I had been called up there, Mr. Stanley.

Q. Two or three times a day?

A. Sometimes I would go up there to see how much coal there was at 12 o'clock or a little before twelve I would go up to see how many tons had been taken out and how many tons would be remaining in the hold so that I would know just about how long to work that coal.

Q. In any case you were up there two or three times a day?

A. Sometimes, and sometimes not up there in the whole day.

Q. Is it not a fact, Mr. Ward, that with this tension on the cable going around the pulleys, the tension being sufficient to wear a groove in the cast iron, that these little wires, instead of sticking out perpendicularly to the cable would be worn smooth?

A. They might come up again; they are steel wire.

Q. They would be flattened, would they not? First of all they go around eight pulleys here with this tension and then they go around sixty more pulleys, then they go around the eight over here, making a total of seventy-six, then they go over the rollers at inter-

(Testimony of George E. Ward.)

vals of fifty feet on this twenty-eight hundred feet track?

A. Yes, sir, but then that is a condition about those wires sticking out; if it had to go over these eight first pulleys it would be shoving that way, but when it had to go around the other curve it would be shoving it that way, and that is the way them wires were shoved and made the [233—166] steel cable twist and spring in that fashion.

Q. Then you mean that these little wires here would not be flattened going around that groove?

A. I told you that the flattening was caused by the grips first, then they start breaking and stick out.

Q. And would be held flat would they not going around these pulleys?

A. They were worn flat before they broke loose.

Q. I show you now a pulley which I ask to have marked for identification.

The COURT.—It may be marked for identification as Defendant's Exhibit 5.

Mr. STANLEY.—I show you this pulley which has been marked for identification as Defendant's Exhibit Number 5 and ask you if the groove there at the foot of the pulley is a groove worn by the pulley in use? A. Yes, sir.

Q. This is the pulley I think you said we took out of the courtroom?

A. I don't know whether that is the same one, but it is one like that that I seen going out.

Q. You don't mean to accuse us of doing anything underhanded?

(Testimony of George E. Ward.)

A. No, I don't mean anything about that. I saw it going away and I would like to have it brought back to show the difference between the two pulleys.

Q. I understand on this occasion when you asked Mr. Gedge to replace the drum and the cable, that Mr. Gedge says, the cable is all right, put in a new drum?

A. He said never mind the cable put in a new drum.

Q. What did you say?

A. I had to obey his orders.

Q. Did you say anything?

A. I didn't say anything; I done just as he told me to do.

Q. Then you told Mr. Gedge there should be a new cable and new drum put in? A. Yes, sir.

Q. Mr. Gedge says, never mind the cable to put in a new drum? [234—167] A. Yes, sir.

Q. And that ended it? A. That ended that.

Q. No suggestion from you otherwise, being a machinist and engineer and arguing with Mr. Gedge that he had better do it now and save time or something of that kind?

A. Well, there may have been something about that—

Q. I am asking you.

A. There might have been that; I know when there are two jobs done at once instead of going back a second time and doing it, if we took the drum out and put in the cable we'd be saving the time instead of putting the drum in and coming back again the sec-

(Testimony of George E. Ward.)

ond time and doing the job all over again; that may be what I said to you, Mr. Stanley, that may be what I said to you.

Q. I am getting at your conversation. You said you told Mr. Gedge to put in a new cable and a new drum, and Mr. Gedge says put in the drum, never mind the cable.

A. Mr. Gedge says never mind the cable, put in a new drum.

Q. And that is all?

A. In reference to the cable I guess that is about all.

Q. And you gave no recollection at this time urging Mr. Gedge to put it in, giving him reasons why it should go in or anything of that kind?

A. I told him about this cable, that they had started breaking and started sticking out; I told him that in the first place and he said never mind the cable, put in a new drum, so I did do that.

Q. Is it not a fact that what you had in mind was this: we will take and put in a new cable shortly, say in a month or so; so, while we are putting in a new drum we may as well make one job of it and put in a new cable?

A. What I had in mind, the cable ought to have been renewed. I had in mind the cable ought to be renewed and I told Mr. Gedge about renewing it. He told me not to mind; to put in a new drum.

Q. Didn't you tell Mr. Gedge, Mr. Ward, while we are about [235—168] this job we might as well kill two birds with one stone?

(Testimony of George E. Ward.)

A. I may have; that is a common saying with us.

Q. Did you say that?

A. I could not tell you, that is pretty nearly two years ago. I cannot remember all these things that I said.

Q. Do you remember testifying "I know my exact words to Mr. Gedge were, better kill two birds with one stone" and repeating that to the jury three or four times?

A. I am not reading those words killing two birds with one stone. That would be rather doing the two jobs at once.

Q. You would be taking two bites at a cherry putting in a new cable now and in a couple of weeks or month putting in a new cable, and as we are putting in a new drum better make one job and put in a cable too?

A. Yes, that is what I am calling two birds with one stone.

Q. You didn't mean to say that that cable was dangerous then or unfit for use?

A. I didn't say anything about that cable being dangerous; I said the strands were breaking and coming out.

Q. And that didn't mean when you wanted a new cable put in that it was dangerous and unfit for use?

A. I don't remember now.

Q. What?

A. I don't remember now just exactly what I said.

Q. You don't remember what you thought of it?

A. I just told you that I thought the cable ought to

(Testimony of George E. Ward.)

be renewed and I told him to renew it.

Q. Anyhow it dropped there, did it, and you just went ahead with your orders and put in a new drum?

A. Yes, sir.

Q. And then went back to your shop?

A. Yes, sir.

Q. And when did you next come down to the coal-conveyor?

A. When that coal ship came in. **[236—169]**

Q. How long before that was it?

A. The boat was alongside the wharf when I got down there.

Q. You had not been down there lately?

A. I had not been down there between the time the drum was put in and that boat was alongside the wharf.

Q. And is it not a fact, Mr. Ward, that when coal vessels are expected that there is a general overhauling of the coal-conveyor made by the company?

A. Well, Akina was told about all that. Sometimes Mr. Gedge would meet me and tell me about there will be a coal boat here pretty soon and that is all.

Q. You mean to say that he would come up to the machine-shop to you and just impart a matter of information, the fact that a coal vessel would be in shortly?

A. No, he would meet me coming or going to work or coming from lunch and he would meet me and he would tell me that. Maybe he was over to shop on other business and he would meet me and tell me we

expect a coal vessel pretty soon. That is all.

Q. Didn't you receive orders whenever a coal vessel was expected to do down there and overhaul the thing and see that it was put in shape?

A. Why, Akina done all that work.

Q. I am asking you, did you?

A. I told you no. Akina did that work unless there was something wrong about the engine and I was notified at the machine-shop and I was told to go down there and I would go down, I had to go down.

Q. Before a coal vessel came in, was it not the fact that you would go down there and generally overhaul the machinery and see that it was in proper working order by the time the vessel arrived?

A. The engine?

Q. The coal-conveyor?

A. The engine, yes. Sometimes I would go down on the engines and turn them over and see that they were all right; that is, the engines—the engine. [237—170]

Q. You limit your authority or your discretion to the engines?

A. If there was anything wrong I would have to make a complaint about them and then I was told to go ahead and I would go ahead.

Q. But you would go down before the coal vessel would come in and overhaul the engines and see that they were in proper shape?

A. I would if I was told to do so, if anything was the matter with the brake or anything. They didn't

(Testimony of George E. Ward.)

want the men monkeying with this, they would growl and they would tell me to go down.

Q. Did you as a matter of fact go down there on to that coal-conveyor and overhaul the engines to see that they were in proper shape before the coal vessel would come in?

A. Mr. Stanley, I have told you now about four or five times if I was told to do so I would go down.

Q. Were you told to do so?

A. When I was told I did do down.

Q. Is it not a fact that you were told on every occasion where two coal vessels would come in you had better go down and overhaul the conveyor and see that it is in shape?

A. No, not on every occasion. The only time I remember was about a brake and I was sent down to see about it.

Q. You testified at the last trial that you remembered two or three occasions that you went down and generally overhauled that coal-conveyor, did you not?

A. I did not generally overhaul the coal-conveyor. I did whenever they told me to, then I went down.

Q. I am asking you did you testify so in the last trial?

Mr. DOUTHITT.—He did not so testify.

Mr. STANLEY.—I will drop that for the present.

Q. You knew, did you not, Mr. Ward, that prior to your accident that the company expected three coal ships to come in in [238—171] rapid succession towards the end of June and beginning of July?

A. I might have been told that. I knew that there was two boats in just the time before I was injured

one right after the other.

Q. And your best recollection is that you were told that the company expected three vessels in rapid succession towards the end of June and beginning of July?

A. I don't remember; I might have been told.

Q. You may have been told so?

A. I may have been told.

Q. What is your best recollection now?

A. That there was two boats there.

Q. I am not asking about the two boats there, but about your information that these boats would be coming in?

A. I told you I did not recollect but to my best recollection now I just remember now if there was two boats there before I was hurt.

The further hearing was continued until tomorrow at 8:30 A. M. [239—172]

Tuesday June 2d, 1914.

Cross-examination of GEORGE E. WARD resumed.

Mr. STANLEY.—You testified yesterday, Mr. Ward, that about the time that you were hurt that the Inter-Island Company was experimenting with wooden dollies instead of cast iron ones?

A. At the time of my accident, did you say?

Q. Prior to your accident.

A. Before my accident.

Q. For instance, on the day of your accident what were they using?

A. They were using all the wooden rollers excepting these two.

(Testimony of George E. Ward.)

Q. Is it not a fact that the tension on that cable was such, Mr. Ward, that grooves were worn right in those rollers?

A. Yes, sir, there are places where grooves wear.

Q. Is not that the general condition, Mr. Ward?

A. That would be the condition on any roller.

Q. Was not that the condition on this conveyor, the whole conveyor?

A. I had not been all over that conveyor, Mr. Stanley.

Q. The part that you did notice?

A. The places I was in I noticed grooves in the rollers.

Q. And what kind of wood was used for those rollers? A. Ohia.

Q. And do you know, Mr. Ward, having been practically—I think you were born in this country, were you? A. No.

Q. You came here when you were about thirteen, did you not? A. About that, yes. [251—173]

Q. And lived here ever since? You know, do you not, that ohia is recognized as being one of the hardest woods in this territory?

A. It is hard wood; I don't know whether it is the hardest or not.

Q. I say one of the hardest.

A. Yes, one of the hardest.

Q. You know that it is used for ties down here by the railway company, the ties on their track whenever they can get them?

A. I have read in the newspaper about the ohia

being used for ties.

Q. Do you recognize that as being one of the dollies used on the coal-conveyor?

A. Yes, that had been used on the coal-conveyor.

Mr. STANLEY.—I ask that that be marked for identification if the court please.

The COURT.—It may be marked for identification as Defendant's Exhibit 6.

Mr. STANLEY.—And also if you recognize this as being one of the dollies being used on the coal-conveyor?

A. Yes, it looks as if it had been used on the coal-conveyor.

Q. And do you recognize or will you say that that represents the groove that was made by this slack cable or whatever you call it, the slack cable on those dollies?

A. Why, I have not seen them all so deep as that, Mr. Stanley.

Q. Have you seen any as deep as that?

A. What is that again?

Q. Have you seen any as deep as that?

A. I know they were taken out and new ones put in, they would always have plenty of spare ones to renew with.

Q. Have you seen them with grooves as deep as that?

A. I don't remember; I have seen several deep ones.

Q. Those are something like three-quarters of an inch in [252—174] depth, are they not?

(Testimony of George E. Ward.)

A. Somewhere around that about three-quarters of an inch in depth.

Q. Is this the general appearance of the grooves made in dollies on the coal-conveyor?

A. What I saw Akina before he got them that far would take them out.

Q. About how far would the groove have been worn?

A. Similar to this and then there would be two or three grooves in places on one, they would be a groove here and a groove there.

Q. So that this cable was eating grooves and forcing grooves right into these hard wooden dollies?

A. They would make a groove in anything.

Q. And that was caused, was it not, Mr. Ward, by the tension and weight of the cable passing over the dollies?

A. No, it was caused by the weight of the cable on it, not by the tension, Mr. Stanley.

Q. The weight of the cable? A. Yes, sir.

Q. Just laying the heavy cable,—resting on it, the weight of the cable, or the motion?

A. The weight of the cable resting on the roller.

Q. Now, Mr. Ward, you are not fooling?

A. No, I am not fooling. Let me explain it to you. You ask me these questions so many ways and I try hard to explain it, as hard as I can. The tension that you speak of, Judge Stanley, is between two cars, and with that roller so low that she would not touch the cable at all, and the sagging of the cable is what the rollers take up, the sagging of the cable, then that

(Testimony of George E. Ward.)
is the weight that I am speaking of.

Q. And you mean, then, that the mere fact of the cable resting on these and on the cast iron rollers when they are in use would cause this groove?

A. And friction.

Q. And friction gained how?

A. Why, by starting up [253—175] the cable. Before that roller would get started, why there would be a little slip by that cable that caused friction and wear.

Q. And by that—

A. One minute, Mr. Stanley. And then when the engine is instantly stopped and cable stopped these rollers will still revolve a little bit and cause friction and wear.

Q. You say there would be a little slip of the cable; you mean there would be a little motion there over the dollies or over the pulleys?

A. Before it got its proper speed.

Q. And with the weight of the whole cable behind them, this heavy cable moving that would cause the rope to slip and groove?

A. Yes, before you got the roller in motion, up to speed. After it picked up its speed it would continue on that speed.

Q. Now, your immediate boss down at the Inter-Island for a number of years prior to your accident was Mr. Muirhead, was it not?

A. What is that again, please?

Q. Your immediate boss, the man immediately over you down at the Inter-Island for some years

(Testimony of George E. Ward.)

prior to your accident was Mr. Muirhead, was he not?

A. When I was in the shop, yes, sir.

Q. Did you report to Mr. Muirhead that you had suggested to Mr. Gedge the putting in of a new cable early in June and that Mr. Gedge refused to do it?

A. No, sir, I don't remember of anything about a cable to Mr. Muirhead.

Q. What?

A. I don't think I ever spoke about a cable to Mr. Muirhead.

Q. So far as you know now you made no report of that matter to Mr. Muirhead?

A. What is the date again, please, in June, what year?

Q. In June, 1912 was it not, that you told Mr. Gedge that you felt there should be a new cable put in? Now I am asking [254—176] you if it is not a fact according to your present recollection that you never reported to Mr. Muirhead the fact that Mr. Gedge would not have a new cable installed?

A. I don't remember saying anything to Mr. Muirhead. The fact of the matter is Mr. Muirhead had nothing to do with the coal-conveyor than I had; it was Mr. Gedge, and when he refused why it was not my idea of ever going and talking to anybody because he is the man. Mr. Muirhead had nothing at all to do with that conveyor that I remember.

Q. Mr. Muirhead is the chief engineer for the Inter-Island Company?

A. Yes, he is the superintending engineer.

Q. Superintending engineer of that company?

(Testimony of George E. Ward.)

A. Yes, sir.

Q. Now, then, on this Saturday prior to your accident that you were working down in the hold of the coal vessel and you found that something was wrong on the conveyor you went up there, is that so?

A. I told you that I was working down in the hold of the ship and I noticed the buckets had not gone out and I came out of the hold to see what was the matter, to see whether the man told me he had a full hopper and I went up to see what was the matter, I could not see no men around the towers then and that naturally told me there was something wrong somewhere.

Q. How was your attention first directed to the fact that there was something wrong?

A. I just told you that I was down in the hold and didn't notice the buckets taking no coal up.

Q. Didn't notice the buckets? And the buckets come down, do they not, when you start unloading the ship and the holds are pretty well full, nearly full, they come down, do they not, at the rate of about—it takes about twenty-five seconds, does it not, for the bucket to come down to the coal, go back, for the discharge and get back to get coal?

A. I don't know, I never timed it. **[255—177]**

Q. You have been there year in and year out, I will ask you if you think that statement would be pretty reasonable that it would take from twenty-five to thirty seconds for the bucket to land in the hold, grab its load of coal, discharge in the tower and get back to the hold?

(Testimony of George E. Ward.)

A. I never timed it in seconds, never timed it at all.

Q. It would take about a half a minute, wouldn't it?

A. Really about half a minute, I guess, to go down and back again.

Q. And when you got down to the bottom of the hold it takes how long when you have got to do a little shovelling and you have got these men shovelling coal in the vicinity of the bucket; it takes about forty-five minutes for the round trip, does it not—forty-five seconds?

A. I don't know the length of time it took, I do know that the deeper you get in the hold the longer it will take a bucket to get up and down because it has got a little further distance to travel.

Q. And from your experience there would you say from forty-five seconds to a minute would be about the time it takes for the round trip of this bucket?

A. I never timed any of those buckets by seconds, I just told you I never timed those buckets.

Q. I am not asking you to give us the seconds because you say you don't know. I am asking you from your experience there as a matter of fact, for you are the superintendent, if one minute would be sufficient to cover the round trip necessary when you are going up and back to the hold of the vessel?

A. Yes, from the bottom of the ship to dump and be back again in one minute, somewhere around there.

(Testimony of George E. Ward.)

Q. Now, then, you noticed, as I understand you, on the coal vessel, that the bucket was not coming up?

A. The bucket got **[256—178]** down in the hold and did not go up.

Q. Now, how long had you observed that condition before you went up on the conveyor?

A. Why, the men were shoveling there and I did not see the bucket come down so I naturally looked up from the hold and I can't see anything there but these booms, that is all I can see when I am down in the hold, that is all I can see are these booms crossing the hatch so I have to get out to see what is the matter and I climbed to the deck to look out as the men on top tells me the hopper is full—

Q. You have not answered my question. My question is how long had you been down in the hold and observed that the buckets were not coming up?

A. Why, I worked down there all that morning.

Q. Were the buckets out of operation, say thirty minutes?

A. You just asked me the question how long I have been down in the hold and I answered you that I have been working on that ship all that morning.

Q. How long had these buckets been idle, not traveling, when you observed that condition?

A. Oh, I don't know, Mr. Stanley. I have to look around the hold to see whether they are shoveling and maybe never noticed the bucket or anything, and not waiting I did not notice the bucket come

(Testimony of George E. Ward.)

down. I can't tell you how long that was, I can't tell you to a second or minute, my mind is too much occupied on other things.

Q. On this case, for instance. You were down in the hold and you expect that bucket to come down under the worst circumstance, if you are down near the bottom, the coal is down near the bottom, you expect that bucket to get down there once a minute. Now, how long—I am trying to get some idea of how long this condition had been going on that those buckets were not coming down for loading one a minute before you went up to [257—179] the conveyor?

A. There is different conditions; if the hold had been about half empty so that you had to shovel the coal away from the bulkhead and maybe after shoveling for half an hour or so the bucket would go down there and pick up those two loads, then the bucket wouldn't be down for another half an hour until there was sufficient in your skin to get the bucket full, and there you have all those conditions to look at.

Q. Then you don't know whether it is a half an hour, a quarter of an hour or ten minutes or five minutes that you noticed these buckets were not in operation? A. I never timed it.

Q. You don't know anything about it?

A. I never timed it.

Q. Now, then, when you did notice that these buckets that were supposed to go up and down with this speed were not running, you left the boat and

came up on the coal-conveyor?

A. I left the hold and came out on the deck and the men told me that the hopper was full. I asked him and he sung out that the hopper was full and I went up and could not see no men around here and no cars around here and so I went up.

Q. You told us that now several times?

A. You asked me.

Q. You came up here and when you arrived you found that the cable had been put back on the trolleys, is that right?

A. When I got there the cable had been put on the pulleys.

Q. And the engine had already been started up again? A. And the engine was running.

Q. You don't know, Mr. Ward, I take it, how long it had taken the employees up here to restore the cable to the pulleys?

A. I had not saw that cable off, Mr. Stanley, I told you that just now, and I never asked those men about the time but I stood there and watched the thing running. **[258—180]**

Q. You know, do you not, that on that occasion the men stopped the engine first down mauka by the scale-house, raised the weight at the drum or rolled the drum over, took the grips off the cars and put it back by hand?

A. I told you I didn't know, the thing was on and running when I got there. I didn't see them raise the box and I didn't see them lowering the box.

Q. Now, the greater the number of pulleys that the

(Testimony of George E. Ward.)

cable is off, the greater the difficulty there is about getting it back?

A. The greater number, it all depends on the condition of the cable, the weight, the conditions. Well, if it had come off the whole complete circle, why, yes, there is more trouble sure than if it came two-thirds of that circle.

Q. Or if it came one-half?

A. It depends on how the rope is.

Q. And if it is two-thirds why it is a matter of more difficulty?

A. You have a little bit more cable to put on than if you had one-quarter.

Q. And it is a matter of greater difficulty to get back?

A. I just told you it depends on the cable, Mr. Stanley.

Q. Now, with the cable off, we will say, practically thirty of the makai pulleys, as you have illustrated it, was on the Saturday—

A. That I illustrated, I didn't illustrate anything like that, Mr. Stanley.

Q. Didn't you?

A. You never asked me that question.

Q. But you recognize if the cable is off thirty pulleys, we will say, from the mauka one of this bunch of sixty right away around to almost the head of the coal-conveyor, the makai end, that there is very much greater difficulty to get it back than if it was off four of the set of eight?

A. It depends on the condition of the cable, Mr.

(Testimony of George E. Ward.)

Stanley. If you have sufficient slack there why you can put it back just the same if you put it [259—181] back on forty or sixty.

Q. The way you say you get the slack is by the momentum of the cars? A. Yes, sir.

Q. Or by pulling it around the whole conveyor where you have been going so often in this case and taking it up every hundred or two hundred feet?

A. If you have to do that then you have to pack that cable all around starting here from the scale-house and packing it along in this way two hundred feet until you get it where it is wanted.

Q. Did you ever do that, Mr. Ward?

A. At the coal-yard I had to do that.

Q. Did you ever, Mr. Ward, travel around this 2800 feet of cable, pulling it a hundred feet at a time until you got the slack where you wanted it?

A. At the coal-yard we had to do that.

Q. Did you ever travel around this coal-conveyor packing this cable by that method until you got the slack where you wanted it?

A. When it is in the coal-yard, we had to do that, Judge Stanley.

Q. How often did you do that?

A. How often did I do that?

Q. Yes.

A. I was down there when it was done, I don't know just exactly how often, maybe once or twice, maybe, in my time.

Q. Maybe once or twice in your time?

A. Yes, sir.

(Testimony of George E. Ward.)

Q. In your four years of continuous service with the coal-conveyor?

A. I cannot remember the number of times in them four years.

Q. That is what I have asked you, how often you seen it done?

A. I don't know, Mr. Stanley, but I know two or maybe three instances that I have saw it done. **[260—182]**

Q. You said once or twice a minute ago, why do you change to three?

A. Take it once or twice, I cannot remember the number exactly I told you.

Q. Go back to once or twice, now, that you remember, Mr. Ward, and relate who was there when it was done—can you give us an instance when that was done, one of the instances when it was done in the fashion you have described?

A. Why, one of the instances it was done, it was done by the coal packing up there, that threw the car off the track and threw it entirely off that curve there. Mr. Gedge was there and saw it done himself at that time and I think that the other time Mr. Gedge was there and saw it done. I am sure that Mr. Gedge was there at them two times and saw that done.

Q. What two times?

A. I can't tell you exactly, I didn't keep dates on times and things like that, I only remember them things, Mr. Stanley, that is what I am telling you.

Q. Once or twice?

(Testimony of George E. Ward.)

A. Maybe twice, once or twice, yes.

Q. Was it twice? A. Twice, yes.

Q. Is it not a fact, Mr. Ward, that the only time that was ever found necessary to be done was on the occasion when a car was derailed going around this mauka curve leading over to the coal-yard, the car was derailed and thrown completely off into the harbor? A. I remember that now, Mr. Stanley.

Q. You remember that now?

A. Yes, sir, that will be the third instance now, I remember that.

Q. That is the third time?

A. Yes. I said to you a little while ago, two or three times. I didn't keep tab on these times but I remember now it went completely off, the car and all.

Q. Went completely off the car and all into the harbor? A. Down into the slip, yes. **[261—183]**

Q. And derailed several other cars?

A. What is that again?

Q. And derailed several other cars?

A. No, no, I didn't say that it derailed several other cars.

Q. I am asking you, didn't it derail several other cars?

A. I am telling you about the car going off the track, the whole thing went off the track, took that car, threw the car and all went off the track. I didn't say several cars.

Q. I am asking didn't it, as a matter of fact, when the car was derailed, being attached to this thing

(Testimony of George E. Ward.)

below the car, it was attached to the cable, was it not? A. The grip was attached.

Q. The car was attached to the cable by the grip?

A. Yes. It was a loaded car.

Q. The car was thrown completely off the conveyor into the water, wasn't it? A. Yes, sir.

Q. That took the cable off, too, didn't it? e

A. It took the car. One thing, the grip broke and let the car go and there was no more car on that when we saw it.

Q. And the cable was generally misplaced by that car going over?

A. Now, I will try to explain—

Q. Answer that question.

A. I will answer you if you just give me a chance. I am trying hard to explain to you and I am pretty sure you understand, too. This across here is only about a quarter of a circle, there is about ninety degrees on the turn, which would be a quarter of a circle pretty nearly here, similar to that, and this car opened up and let the whole thing right out of the car and the coal ran in under the car, the gates had opened and the coal ran under the car and lifted the complete car off the track, cable and all, and she swung this way clean out. The other cars were a great distance off and the cable—the grip was not strong enough, being [262—184] made of castings was not strong enough to hold the weight of that car, so the car went across into the water and the cable was laying like this. Now, is that plain?

Q. Now, the cable was laying here hanging down

in a sag by the coal-conveyor?

A. Sagging down there.

Q. Sagging down over the side of the coal-conveyor towards the water? A. Yes.

Q. And is it not a fact that having taken the cable off the track that several other cars were derailed by the fact that this cable did leave the track and went down near the water?

A. I just told you how it left the track. I have never said anything about several cars. I have answered that two or three times.

Q. You first started to tell us about the car being derailed on one of the other occasions that you noticed, tell us about that instance.

A. Over in the coal-yard.

Q. What happened there?

A. The coal had packed up there, it got over the top of the track and derailed the car and that was the cause of the cable coming off on the mauka end.

Q. What happened to the car at that time?

A. It came off the track.

Q. And the cable came off too?

A. The cable came off that circle there.

Q. And pulled the thing down at that circle right off?

A. Right off the track like that (illustrating on model).

Q. Going right down in this way?

A. Yes, going right down this way like that and the car was hanging over like that on the strand of the cable, hanging onto it like that right up against

(Testimony of George E. Ward.)

the post similar to that.

Q. At the mauka end?

A. In the coal-yard, yes.

Q. Pretty generally off the track?

A. Pretty generally [263—185] off the track. The momentum of these empty cars takes up any slack that it receives there at that end.

Q. At the coal-yard?

A. At the coal-yard. The car is going this way for instance to take the coal and place it on the wharf, the cars is going, this was, an empty car, is going away and when you stop the engine the loaded cars will stop here and the momentum of the empty cars takes up all the slack away from this place, will not allow any slack there. And it is quite different when you get on this end and have all the cars in motion away back of this place and then the mometum of the car gives you all the slack at this place.

Q. These are loaded cars going this way?

A. In the coal-yard.

A JUROR.—And that will give you slack?

A. Yes, and if a car came off and dragged along you'd see the marks of the car as it went bump, bump, bump, bump, bump, until it got over here and this cable was still holding and it would continue over. This one instance that I am speaking of at the coal-yard that we had to go all around to get that slack as that slack had already been taken up, and another thing is in regard to the coal-yard. The difference of the coal-yard to the end of the wharf, the end is so far away from the

(Testimony of George E. Ward.)
workmen when the thing does happen like that it is not seen until one of the men blows a whistle to stop the engine, and the engine is still going and the engine has taken all the slack and the thing is contiued until you stop the engine.

Q. Is that the coal-yard end?

A. At the coal-yard end whereas at this makai end the men are there all the time and they would say stop the engine.

Q. And that is the thing they do when they are right down here and see the cable come off the pulleys, they stop it and it is stopped?

A. They call Akina, and Akina is the man that **[264—186]** gives the orders to stop, I have told you that many times.

Q. Do you mean to tell us, Mr. Ward, that the men down here do not stop it or order it stopped themselves?

A. If Akina is not there they will do it and if I am not there they will do it, Judge Stanley.

Q. And if they see Mr. Akina a hundred yards down they will not give the order to stop, they will wait until he comes up here and then say stop, is that what you mean? A. Yes, they will call him.

Q. And then wait until he travels up this hundred yards to see it and then it is stopped?

A. Hundred yards, no.

Q. How far is it from the end of this cable to the scale-house? A. To the scale-house?

Q. Yes.

(Testimony of George E. Ward.)

A. That is about a hundred yards, three hundred feet.

Q. And do you want to tell this jury that if they saw him a hundred yards away up at the scale-house then they would merely call him and wait until he comes up here to see it is off and then stop it?

A. They will holler out in Hawaiian "E hemo ka cable," and if he heard that very likely he will stop the cable himself.

Q. Then they don't wait for him to get up, but seeing him down there they yell, stop the engine?

A. He goes down there—stops the engine and goes down there and examines it.

Q. And they yell to him what occurred from there?

A. Yes, they sing out to him hemo ka cable, or something like that.

Q. And don't wait, the engine is not allowed to run from the time that Mr. Akina is walking this hundred yards—

A. It will continue to run if he don't stop it, but I am telling you he **[265—187]** will stop it and then come down and see.

Q. He will stop it if he is there?

A. Yes, and if he is not there the men will. At a time when he is away over in the coal-yard they could not sing out to him E hemo ka cable because they could not see him and he could not hear them either.

Q. Little Jimmie, that you talked about was stationed there within a few feet of this attachment to

(Testimony of George E. Ward.)
the throttle? A. Yes.

Q. With instructions when he heard the cable was off to immediately turn off the engine, stop the engine?

A. If Akina was not there he would do that, yes.

Q. Now, on the Saturday you came up here and the thing had started running again and you noticed the thing was climbing? A. Yes, sir.

Q. You have testified yesterday, did you not, Mr. Ward, that prior to that Saturday you had not seen the cable off the makai end of this conveyor?

A. No, sir, I do not ever remember seeing a cable come off that makai end.

Q. You also testified, Mr. Ward, that a new cable or a cable that was not worn out would not come off this makai end?

A. I testified I never saw any cable come off.

Q. Didn't you testify that a new cable would not come off?

A. A new cable would not came off that end, Judge Stanley.

Q. How do you know?

A. Because I know from experience down there, I never saw one come off.

Q. They don't always now use a new cable do they—when have they put in a new cable?

A. When did I see the new cable?

Q. You have seen a new cable there in six months, you say?

A. I have seen a cable there in six months.

(Testimony of George E. Ward.)

Q. And you have never seen it come off?

A. No, sir, I never seen that cable come off.

Q. How do you know that that cable never came off?

A. Because I never seen it come off, and I know that they are not claiming that there is an obstruction there for to throw the thing off.

Q. Now, I understand this Saturday after you had been working there for four years that you went up there and for the first time tried to find *at* what made that cable come off, is that right?

A. I stood there to watch and see what made that cable come off.

Q. But on this time the first time after your four years of experience you went down there and tried to find out what made the cable come off, is that right?

A. They told me the cable had been off and I stood there to see what made it come off and I saw the thing climbing.

Q. Yes, but from the time that you erected this conveyor up to the Saturday before you were hurt you had never found out that a rotten cable or old cable would climb?

Objected to.

Q. Did you ever see a rotten cable there?

A. No, sir, that, Mr. Stanley, that is the first cable I ever saw in that condition in the coal-conveyor.

Q. I am not asking about this particular rotten condition, I am asking did you ever see a rotten cable in use on this coal-conveyor, a cable which had

(Testimony of George E. Ward.)
been in use say seven months, a cable in the same condition that this cable was?

Objected to.

Mr. STANLEY.—I am asking about a cable that had been broken, worn.

Q. Worn with little wires broken? [267—189]

A. No, I never saw one like that, in that condition, that is the first time I ever saw such a rough cable on the conveyor. I saw cables, Mr. Stanley, that had been worn and there had been no wires broken, it had been worn off flat from friction and wear and from the grips and it had been worn down flat, the little wires, nineteen wires, had been worn down flat but they had not any of them broken loose away and stuck out.

Q. None of them, for instance, cracked?

A. Not as I noticed, no cracks.

Q. None of them cracked?

A. Only the day they were putting in the drum.

Q. The previous cables, have you ever seen any of these cables crack after seven or eight months?

A. I have never saw a cable, Judge Stanley, in bad condition like that.

Q. You are dodging the question again. Have you ever seen a cable similar to this one which had little wires on it cracked?

A. No, I have never noticed.

Q. And you do know don't you that what causes the cracking of the cable is the grip of the car where the cable passes through, the shoe of the car?

(Testimony of George E. Ward.)

A. I know that is the cause of the wear of the cable.

Q. And the cracking then comes in the little wire from the clamping on the cable?

A. There is different conditions about a wire breaking, you can break a perfectly new wire by constantly bending it, that will break a wire that has never been used before, especially steel, it gets crystallized and snaps although never bent before, even on a wire cable where there is no grips that constant wearing and tearing of the cables, a cable will break by constant bending going around sheaves or going around curves and constant bending backwards and forwards and will [268—190] break wires, often break wires that have never been worn at any time. You can take a wire, Mr. Stanley, with your own hands, a brand new wire right from the manufacturing place and you constantly bend that wire and you can break it.

Q. Well, it can break as a matter of fact. We don't want a thesis on how you can break wires. You want to leave your statement to the jury now that never before on no other cable save this one by which you were hurt or say you were hurt have you ever seen any broken wires of cracked wires; if that is so, leave it?

Mr. DOUTHITT.—That is correct, is it?

A. That is correct, I have answered that two or three times.

Mr. STANLEY.—And on no occasion prior to this Saturday before you were hurt had you found

out that the cable would leave the trolleys, a cable would leave the pulleys on account of its roughened condition?

A. Ask that question again, Judge Stanley?

Q. On no occasion prior to Saturday, the Saturday before you were hurt, had you ever noticed the case of a cable coming off at any time say on account of its roughened condition?

A. I just told that I never saw a cable coming off at the makai end.

Q. Then you decided on Saturday that that was the cause?

A. Why, I stood there and watched because I had never seen a cable come off there before and I stood there and watched while the cable was in motion and I noticed it climbing and dropping on those pulleys.

Q. I call your attention to Exhibit 5 for identification and ask you when you saw this—when you went down there was the cable at times in a groove shown on the pulley? [269—191]

A. At times it would be in the groove and then it would climb and go down again.

Q. How high would it climb?

A. Just like that (illustrating on Exhibit 5).

Q. Stop when you get to the height?

A. About that high.

Q, Do you mean within a half an inch or an inch of the top of the pulley?

A. About that, I didn't measure it, I just seen it going up and down. It would run for awhile I remember and not climb and all at once it would

(Testimony of George E. Ward.)

climb and down again.

Q. You never saw it come off?

A. No, sir, I never saw it come off.

Q. On which of the pulleys was it that you saw that action, can you show us here? A. Yes, sir.

Q. Show us.

A. Here is where I was watching and I saw it there.

Q. Raising there, the cable raising up and down?

A. Yes, I could see the cable raising up and down.

Q. These ones over here? A. Yes.

Q. You were watching these? A. Yes, sir.

Q. And you were standing right here?

A. Yes, sir.

Q. And the cable was along on the Ewa side in the groove of these pulleys and you would occasionally see it raising on the outside and dropping down on the pulleys?

A. It would raise up and drop down again, raise up and drop down again.

Q. And how long did you stay there, Mr. Ward?

A. I don't know, maybe about five or ten minutes and went away and continued on my work.

Q. And the cable was in operation at that time? [270—192]

A. The cable was running at that time.

Q. And you were loading or unloading—unloading, I guess?

A. Unloading, the cars was running.

Q. The cars were running? A. Yes, sir.

Q. Is it not a fact that when the cars are running

that the shoe of the car which holds the cable will itself raise that cable towards the stop of the pulley?

A. Why, it raises it a little bit just so as the shoe will clear the flange.

Q. Is it not a fact that the shoe itself is almost on a level with the top of the pulley?

A. The shoe itself?

Q. Yes? A. The top of the shoe?

Q. Yes.

A. The top of the shoe might be of the same height as the top of the pulley, but where the cable rests in is not.

Q. No, but it is brought very near the top of the pulleys, is it not?

A. I told you that where the cable rests in—

Q. In the shoe? A. In the shoe.

Q. The grip?

A. Yes, that is not nowhere near the top.

Q. The top?

A. The top of the shoe will come to that but there is a groove in there or a slot that the cable fills in.

Q. What is the depth of that shoe?

A. About two and half inches, then the cable.

Q. Then you have got the cable?

A. The cable is laying in about that condition, you only clear the distance of the shoe so that shoe won't ride on the flange.

Q. Then you noticed it and you made up your mind that that was the cause of the cable coming off, did you?

A. I saw the cause of the cable coming off, I saw

(Testimony of George E. Ward.)

what made that cable come off. [271—193]

Q. And you noticed also did you, Mr. Ward—I will ask you did you notice anything else besides the cable rising and falling on these pulleys over here?

A. Yes, I noticed the condition of the cable.

Q. Did you notice any other movement of the cable?

A. I told you that I saw it going up and dropping down.

Q. Did you notice any other movement?

A. No, sir, I noticed no other movement only going—that it was going ahead in the usual way, noticed that the engine was running, I seen that.

Q. Did you notice, for instance, that the wires that were sticking out on this cable were keeping the cable away from the pulleys?

A. Why, that cable turns, always turning one way or the other, it never stands still, it is always turning one way or the other, first it is turning to the right and then turning to the left, not all the way around, but it is moving.

Q. It has got a rotary motion?

A. A rotary motion, yes.

Q. Something like a—

A. Then these little wires would interfere with this groove and catch on the groove and lift it out of the groove that was the cause of the climbing.

Q. Yes, but did you notice that on account of these projcetions and wires about an inch long that the projections kept the cable away from the pulley?

A. It was climbing, I noticed, for instance, the

(Testimony of George E. Ward.)
cable was coming along and the wire was sticking out of the cable and was sticking there and it would keep it out of the groove and it would climb then down again and the same thing would come along again when the wires would stick on one of the pulleys and naturally climb.

Q. Did you notice one of those quarter-inch projections or [272—194] half-inch projections keep the thing away from the trolley?

A. It was the turning, caused by the wires sticking out, Mr. Stanley.

Q. And those were not flattened down by going around these curves, those wires?

A. They stuck out in all directions.

Q. Now, then, you say after you observed this you saw Mr. Gedge and you spoke to Mr. Gedge later. About what time of the day was it that you made these observations?

A. It was sometime in the morning.

Q. About when?

A. Oh, I cannot exactly tell you, it may be around ten somewhere, around that time anyhow.

Q. Was it somewhere around ten?

A. It was before the noon hour.

Q. That is all that you can say?

A. That is all that I can say, I kept no time.

Q. It may have been seven o'clock in the morning, ten o'clock or eleven?

A. It was after seven, around ten o'clock somewhere in the forenoon.

Q. Where did you see Mr. Gedge?

(Testimony of George E. Ward.)

A. On board ship.

Q. What time did you see him?

A. I think that was when he came down and took the forenoon or maybe after one o'clock. I saw him on board the ship, I am not exactly sure of the time.

Q. You are not sure of that?

A. It was around the noon hour, either before or after noon.

Q. Somewhere around there? A. Yes.

Mr. DOUTHITT.—By that you mean the noon hour?

A. Yes, around the noon hour.

Mr. STANLEY.—Who was present when you had this conversation with Gedge?

A. I do not know.

Q. Was anybody present?

A. I do not know. The sailors were all around the decks and one thing and another, I [273—195] didn't know any there, I don't know if there was anyone there. I didn't look around. I know there was none of my men there because they were down in the hold. I don't know if there was anybody else around there.

Q. What did you tell Mr. Gedge?

A. I told him about the bad condition of the cable, that it was rising and coming off and that we would have to have a new one.

Q. And what did Mr. Gedge say?

A. He said all right, he would put a new one in and I relied upon it and that is all the conversation

there was about the new one.

Q. You didn't tell him you depended on that?

A. No, sir. I relied on it. I didn't tell him anything more about it, there was no other conversation about the cable.

Q. Did he say when he would put the new one in?

A. No, he didn't say when. He said he would put it in.

Q. That is all?

A. I knew it was Saturday and he had Sunday to put it in, he knows that as well as I do, he has the charge of the place.

Q. Mr. Gedge didn't say anything about it being Saturday or Sunday, but just said he would put it in?

A. Yes, that is all, I never asked him no more questions.

Q. At the time this car came off at the mauka curve, the cable as I understand left the trolleys, the cable? A. Yes, sir.

Q. The cable with the car on it left the trolleys and sprung off the track.

A. Yes, car and all went over.

Q. The cable when it left the trolleys or sprung outwards or towards the slip when the car went out it went out with the car? A. Yes.

Q. And when the cable left the trolleys it carried the car about a distance of five or six feet over the platform, didn't it, [274—196] and then dumped it into the slip?

A. I don't know anything about the distance, I

(Testimony of George E. Ward.)

know the car was off the track and over in the water and the car went off and carried the cable with it.

Q. Mr. Ward, you have been down there for years when the coal vessels would come in, am I not right, speaking generally of this, we are not getting down to inches, that the platform at that place where the car went off is about six feet from the track, about six feet wide? A. No, sir, I don't think it is.

Q. What is your best judgment?

A. There is a platform there, there are joists, boards, and then this placed about eighteen or twenty inches apart, around there, maybe two feet, I don't know to inches.

Q. Is it not a fact that the car went off here?

A. That is the platform.

Q. But the platform extends some six feet or so at the curve? A. Yes, sir.

Q. At the place where this car went off?

A. When it went off the track, not off the platform. I am speaking when the car had been lifted and got off the rails.

Q. Yes, it was lifted by the cable, was it not?

A. It was lifted by the coal that was dumped there.

Q. First of all the cable was lifted by the coal upon the dollies?

A. No, Mr. Stanley, the car was lifted bodily and the cable and the grip was lifted also and taken off the pulleys.

Q. And sprang out the distance of this platform and dumped the car down into the slip?

(Testimony of George E. Ward.)

A. No, sir, the car continued on because the engine had not been stopped and the car continued on until it struck these things and it got completely off. The car had turned the curve but was off the track and it ran along [275—197] all right until it got in a straight line going towards Waikiki, then the wheels got off the ties and bumped and bumped until it got into that part and the car then went over and carried the cable with it until the grip broke and the car went in the water.

Q. Now, Mr. Ward, on the morning of your accident, July 8th, you went down there, you say, about a quarter to seven in the performance of your duties and saw Mr. Gedge?

A. Yes, I saw Mr. Gedge that morning.

Q. Did you make any inquiries of Mr. Gedge as to whether or not he had fulfilled his promise about putting in a new cable? A. No, sir.

Q. You made no inquiries from anybody or no investigation for yourself as to whether or not a new cable had been put in? A. No, sir.

Q. You went to work without knowing whether a new cable had been put in or not.

A. I went to work aboard the ship, yes.

Q. Not knowing whether a new cable had been put in or not? A. No.

Q. Not knowing?

A. Not knowing, but I relied that it would be put in that is all.

Q. And you went to work?

A. Yes, sir, I went to work.

(Testimony of George E. Ward.)

Q. About what time before your accident did you first learn that there was trouble with the cable upon that Monday morning?

A. Between nine and ten somewhere.

Q. And where were you when you first heard there was trouble? A. On the deck.

Q. On the deck of the coal boat?

A. Of the coal boat.

Q. And how were you—how did you receive word that there [276—198] was trouble?

A. Why, one of the men called for Keoke and told me to come up.

Q. Who was that?

A. I don't know just who it is now, one of the boys up on the towers.

Q. And having received this call for Keoke did he say what this trouble was or anything, or just yell Keoke?

A. Just Keoke, he called me up, Keoke, pilikia, come up.

Q. And you are as sure, Mr. Ward, as you are of anything you have testified to, that the first you knew of the trouble was when you were on the deck of the coal vessel, is that right?

A. Why, when the man called me up I went up to see what it was.

Q. You remember that distinctly?

A. I remember the man calling me, yes.

Q. And you remember that when he called you were on the deck of the vessel and that you went up?

A. Yes.

(Testimony of George E. Ward.)

Q. Now, is it not a fact, Mr. Ward, that some quarter of an hour before this accident happened you were sitting in the scale-house?

A. No, sir. No, sir, I was not sitting in the scale-house. I don't think I was sitting in the scale-house. I was aboard the ship pretty near most of the morning.

Q. Is it not a fact that instead of being on the deck of the vessel and hearing this fellow call out Keoke, and your coming up, that as a matter of fact you were in the scale-house and had been there a quarter of an hour before the accident?

A. Yes, I was in the scale-house when I came up the steps.

Q. When you came up the steps you go by the scale-house? A. Yes.

Q. Is it not a fact that instead of being on the deck of the vessel when the accident happened and being summoned up by the cry of Keoke, pilikia, that you had been for a quarter of an [277—199] hour before that in the scale-house there?

A. Well, I had been at the scale-house, Mr. Stanley, but about your quarter of an hour, I don't know whether it was a quarter of an hour before my accident, or how long before my accident that I was at the scale-house.

Q. Is it not a fact that when you heard there was trouble you were in that scale-house, and not on the vessel?

A. I was on the vessel and was called, Keoke, and that is what brought me up.